

13-1837-cr(L)

13-1917-cr(con)

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

JON HORVATH, DANNY KUO, HYUNG G. LIM, MICHAEL STEINBERG,

Defendants,

TODD NEWMAN, ANTHONY CHIASSON,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX
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(Pages A-742 to A-987)

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In The Matter Of:
UNITED STATES OF AMERICA, v
TODD NEWMAN

November 20, 2012

SOUTHERN DISTRICT REPORTERS
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Original File CBKFNEWF.txt

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CBKFNEW1	Trial	Page 1017	CBKFNEW1	Trial	Page 1019
1	UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		1	is important?	
2	-----x		2	MR. WEINGARTEN: What we did, we selected carefully	
3	UNITED STATES OF AMERICA,		3	from an enormous universe.	
4	v. 12 Cr. 121 (RJS)		4	THE COURT: The fact that you think it's important and	
5	TODD NEWMAN,		5	selected carefully gives me great consolation, but what about	
6	ANTHONY CHIASSON,		6	the fact that they went to dinner at Pallazo and a Jets game at	
7	Defendants.		7	five is indicative of anything but that they're friends?	
8	-----x		8	MR. WEINGARTEN: It's more than that.	
9	New York, N.Y. November 20, 2012 9:30 a.m.		9	THE COURT: Come on, Mr. Weingarten, give me a break.	
10	Before:		10	We've got a photo of these guys here. What does this get us?	
11	HON. RICHARD J. SULLIVAN,		11	MR. WEINGARTEN: We have photos that makes them	
12	District Judge		12	looking like mug shots that they're intending to use. We're	
13	APPEARANCES		13	trying to establish a relationship, that they're very, very	
14	PREET BHARARA		14	good friends, spend a lot of time together, they're loyal to	
15	United States Attorney for the		15	each other and the logical inference from that more loyal to	
16	Southern District of New York		16	each other as we will establish from the evidence, than they	
17	ANTONIA APPS		17	are to the employer, Mr. Chiasson.	
18	JOHN ZACH		18	THE COURT: And this is brought out by the fact that	
19	RICHARD TARLOWE		19	they watched a Jets game on Thursday night. This seems to me	
20	Assistant United States Attorneys		20	designed to make the jury dislike these guys because they have	
21	SHEARMAN & STERLING		21	disposable income, which is exactly what you were objecting	
22	Attorneys for Defendant Newman		22	against before.	
23	BY: STEPHEN R. FISHBEIN		23	MR. WEINGARTEN: Well, again, your Honor --	
24	JOHN A. NATHANSON		24	THE COURT: Very hard to see why this is relevant to	
25			25	anything.	

CBKFNEW1	Trial	Page 1018	CBKFNEW1	Trial	Page 1020
1	(Trial resumed)		1	MR. WEINGARTEN: Again, if I may, what we will seek to	
2	(In open court; jury not present)		2	establish, that this was more than -- this was far more than a	
3	THE COURT: We're waiting for one more juror, but		3	professional friendship. They spent time together --	
4	while we're waiting is there anything that we need to address?		4	THE COURT: There's no question. Is anybody disputing	
5	MS. APPS: Your Honor, just one small matter. Mr.		5	that, are you disputing that, that they spent a lot of time	
6	Weingarten presented us some of the exhibits he intends to use		6	together.	
7	in his cross-examination, the government has a 403 objection to		7	MS. APPS: No, your Honor.	
8	a handful of them. May I hand them up?		8	MR. WEINGARTEN: My point is, sometimes the expression	
9	THE COURT: Great, thanks.		9	is a picture is worth a thousand words, sometimes an exhibit is	
10	MS. APPS: Essentially, what these relate to are,		10	worth a thousand words. If I'm unable to elicit from him on	
11	they're e-mails relating to the relationship between the		11	cross-examination, I should be able to prove it with documents.	
12	analysts, and the first one has a picture, they're talking		12	THE COURT: It's not in dispute, right? Well, what is	
13	about Hamptons and golf, things like that. And the		13	the prejudice, I guess, let me ask the government that.	
14	government's position is the witness has already testified to		14	MS. APPS: The prejudice is just that you know, the	
15	the nature of the friendship. This has little probative value		15	nature of the photograph, for example, I mean --	
16	over and above that testimony and has potential prejudice.		16	THE COURT: The nature of the photograph is just a	
17	THE COURT: I don't understand. What is the relevance		17	bunch of guys hanging out. They've all got their arms around	
18	of this stuff?		18	each other. I don't know who's who.	
19	MR. WEINGARTEN: Your Honor, in my opening, I said to		19	MS. APPS: There is alcohol in the picture. It's	
20	the jury the nature of the relationship between the analysts is		20	additional things like golf -- it's not that it's disputed,	
21	important. The government did elicit evidence in the direct		21	your Honor, but by having it in exhibits like this, it just	
22	examination of Mr. Tortora about the relationship. We were		22	adds to the prejudice, essentially, as you say, people with	
23	very, very careful --		23	high net worth income spending it in ways that not everybody	
24	THE COURT: The fact that they go to a Jets game,		24	would be able to spend it in. That's really part of the	
25	they're up for watching a Jets game at five and dinner at Tao		25	concern here.	

<p>CBKFNW1 Trial Page 1021</p> <p>1 Now, look, we're not objecting to eliciting 2 compensation information, that obviously has come out or 3 anything like that, but this just, we say goes one step too far 4 in that direction.</p> <p>5 THE COURT: I'm just looking at these now. So e-mail 6 exchanges back and forth about where they're going to go on 7 vacation is relevant?</p> <p>8 MR. WEINGARTEN: Your Honor, again, there's an 9 enormous universe of exhibits like this. We tried to select 10 carefully anticipating the possibility --</p> <p>11 THE COURT: But what makes this one relevant?</p> <p>12 MR. WEINGARTEN: It's an example of the relationship 13 these people had. It was incredibly important to them to spend 14 time together, it was incredibly important to them where they 15 were going to go together. Sometimes the conversation took 16 place during the workday. It is consistent with our theory 17 that their first loyalty was to each other. That's 18 corroborated by the fact that they were sending this 19 information around to each other and not to my client. It is 20 part and parcel of our overall story.</p> <p>21 THE COURT: Your overall story has to be relevant to a 22 defense. The fact he has a friend or that he's got friendships 23 is not a defense.</p> <p>24 MR. WEINGARTEN: The defense is that these analysts, 25 this clique coordinated information together, they were</p>	<p>CBKFNW1 Trial Page 1023</p> <p>1 is leading an adolescent lifestyle by zipping off to Vegas and 2 other golf locations, I don't see why that matters.</p> <p>3 Mr. Fishbein?</p> <p>4 MR. FISHBEIN: One other mechanical issue, there are a 5 handful of documents I'm going to show Mr. Tortora that have 6 those undisclosed recipient lists. In other words, you can't 7 see the "to" that it was sent to, but it came out of his 8 mailbox. We've agreed with the government and I propose in my 9 showing it to him that we've agreed with the government that 10 this came out of your e-mail box.</p> <p>11 THE COURT: Phrase as it as stipulation so the jury 12 understands, but that's fine. It's a stipulation, the jury 13 knows it's a fact that they should accept.</p> <p>14 All right, we're still waiting for a juror. We've now 15 spent a week on one witness and we're not done, so at this 16 rate, I assume this is going to take about three months.</p> <p>17 MS. APPS: If it's any consolation, your Honor, and 18 I'm sure it's not, this is unquestionably the longest witness 19 on direct. I could only infer it will be the longest witness 20 on cross-examination. There is one other witness who will be 21 long; Mr. Adonakis.</p> <p>22 THE COURT: Who is next? Do we know the lineup on 23 this?</p> <p>24 MS. APPS: Yes, your Honor. We're calling a former 25 Diamondback employee by the name of Mark Hadlock. I expect the</p>
<p>CBKFNW1 Trial Page 1022</p> <p>1 consistently together, they spent time together, they traveled.</p> <p>2 THE COURT: You're going to elicit all that on cross. 3 I don't see why e-mails about whether they're choosing, 4 Scottsdale, Miami, L.A., Vegas, the Hamptons, Iceland or Sweden 5 is particularly relevant. In any event, I don't see why where 6 they're going to spend Thursday night or Saturday night with 7 respect to football games in Vegas is relevant. And I'm not 8 going to put them all in as exhibits. Talk about getting 9 drunk, talk about going out for dinner. If you want to bring 10 out the fact that they socialized together, that they saw each 11 other a lot, that they traveled together, that's fine, but I 12 don't think it has to be proven up with extrinsic evidence 13 which I think is of really questionable relevance and at least 14 some of it is potentially prejudicial with no probative value. 15 The fact that they drink is relevant?</p> <p>16 MR. WEINGARTEN: No, not particularly relevant.</p> <p>17 THE COURT: Is the government going to introduce any 18 evidence about the defendant's drinking? Could we just get 19 into lifestyles and whether these guys are leading the sort of 20 lifestyles the jury would approve of? Are we going to get into 21 who uses first class travel, who doesn't use first class 22 travel, what sort of luggage they use? I'll look at this, but 23 I don't think it's coming in. If you want to question his 24 relationship, if you want to get into who his first loyalty is 25 to you can get into that, but if it's just to show that the guy</p>	<p>CBKFNW1 Trial Page 1024</p> <p>1 direct to be 30 minutes, 45 minutes. I don't know what the 2 cross will be. We're then going to proceed with Mr. Sandy 3 Goyal whose direct I would say is approximately two to three 4 hours, and thereafter it gets much shorter, so the only other 5 cooperating witness then is Mr. Lim and I think his direct will 6 be even shorter than Mr. Goyal's potentially.</p> <p>7 THE COURT: Hadlock and Goyal we're not going to get 8 too deep into by tomorrow, I would think, right? You think 9 we'll get to Hadlock today?</p> <p>10 MS. APPS: Based on Mr. Fishbein's latest predictions 11 I would say no. And in fact, your Honor, in terms of 12 scheduling issues, Mr. Hadlock currently has another job. 13 We'll have Mr. Goyal here if we do finish Mr. Tortora before 14 five. I can't recall if your Honor is going to 5:30 or 5 15 today. We'll put a witness on if Mr. Tortora finishes today. 16 We'll put Mr. Goyal on just because Mr. Hadlock is not going to 17 be here today. We'll figure out what happens tomorrow, whether 18 we interrupt Mr. Goyal or fully proceed. I fully expect to get 19 through Mr. Hadlock tomorrow and hopefully as much of the 20 direct of Mr. Goyal as we can manage.</p> <p>21 THE COURT: All right, let's see where we are I guess 22 at the end of the day, but I am getting concerned that we're 23 not moving very quickly and we've got jurors who presumably had 24 plans over the holidays. So, okay. Dan, can you check to see 25 what's going on? See if the juror is there and if they just</p>

CBKFNEW1	Trial	Page 1025	CBKFNEW1	Trial	Page 1027
1	haven't knocked, but otherwise let's give a call to that juror.		1	that. He was not allowed to trade individual stocks but he was	
2	Anything else we can cover productive?		2	allowed to trade ETFs and he said I had in my mind this inside	
3	(Pause)		3	information.	
4	MS. APPS: Your Honor, while we have another minute,		4	THE COURT: So you're saying it was insider trading	
5	we actually have another potential objection here, an actual		5	but it was through ETFs. The inside information was informing	
6	objection, I should say. Mr. Tortora testified that he had a		6	his decision which to invest in?	
7	personal trading account, traded in ETF's, exchange traded		7	MR. FISHBEIN: We're not trying to make the point he	
8	funds, didn't trade in individual stocks. Mr. Fishbein wants		8	was doing something illegal, insider trading. We're trying to	
9	to introduce the account statements from that personal trading		9	make the point that at the time that he says he has special	
10	account and go through multiple account statements to show, as		10	useful inside information about Texas Instruments, Intel and	
11	I understand from Mr. Fishbein, that Mr. Tortora was spending a		11	AMD he's trading this ETF which is correlated and losing money.	
12	lot of time trading instead of working at his job, and		12	So that's one point. Second point is --	
13	secondly, I think try and show some correlation between some of		13	THE COURT: And that's a defense against insider	
14	the ETF funds and some of the information that Mr. Tortora was		14	trading if you lost money? Am I missing something?	
15	receiving during his time, information about the market that he		15	MR. FISHBEIN: It shows that the information wasn't	
16	was receiving during his time at Diamondback and we have a 401		16	very useful to him.	
17	and 403 objection to those.		17	THE COURT: Again, that's not a defense, right? The	
18	First of all, on the amount of time he's spending		18	issue is whether or not it was material non-public information.	
19	doing this trading, that's not something that Mr. Newman had		19	The fact that other information trumped it and made you lose	
20	any idea about, at least I don't understand Mr. Fishbein to be		20	money is not a defense. So I guess I'm trying to figure out	
21	making that claim, so we don't see the relevance of it. And		21	where you're going with it. And it's not only your client's	
22	secondly, with respect to trying to establish a link between		22	state of mind, it's his state of mind.	
23	some ETF or basket, which is a basket of stocks, in the		23	MR. FISHBEIN: If I was making the accusation that he	
24	information that Mr. Tortora was receiving on a day-to-day		24	was guilty of insider trading I would understand that. But	
25	basis about individual stocks like Intel or Dell or what have		25	that's not what we're doing. We're trying to show that the	
CBKFNEW1	Trial	Page 1026	CBKFNEW1	Trial	Page 1028
1	you, there's a 403 concern because then we're going to have to		1	information he had was not --	
2	get into more detail about what an ETF is, that kind of thing.		2	THE COURT: Was not useful.	
3	So we would propose that Mr. Fishbein not be permitted		3	MR. FISHBEIN: Not useful.	
4	to introduce the account statements from Mr. Tortora's personal		4	THE COURT: Again, I'm not sure, that's I assume a	
5	trading account.		5	stretch to say that because it's not useful means that it's not	
6	THE COURT: What is the point of these, Mr. Fishbein?		6	non-public or not material?	
7	You're suggesting he's engaging in insider trading through		7	MR. FISHBEIN: Well, the term that the government used	
8	these accounts?		8	when they were questioning Mr. Tortora over and over again is	
9	MR. FISHBEIN: Your Honor, it's parallel trading.		9	was it useful, and he testified dozens of times this was useful	
10	He's already said that the ETFs are correlated with companies		10	because it told me this, and this was useful because it told me	
11	like Intel and Texas Instruments. He testified if you have		11	that. So I think the utility of it is relevant.	
12	positive or negative news about Intel a proxy for the Intel		12	And the second point, your Honor, is that he testified	
13	trade would be trading in the ETFs. He's losing lots of money		13	that the reason the relationship deteriorated or the reason	
14	trading in these ETFs at the same time he says he has lots of		14	that he wasn't so focused on his job towards the end of 2009	
15	information about these companies. Now, I'm not going to go		15	was that the Galleon case came out and he couldn't get inside	
16	through a lot of these account statements and walk through		16	information anymore. And we do want to establish that he spent	
17	individual trades like this. But I am going to establish that		17	huge amounts of time distracted by trading options in his	
18	he traded these ETFs, some of them, and the two he traded the		18	personal account and on certain days it's literally hundreds of	
19	most are correlated with the stocks at issue.		19	options trades that he was doing in his personal account when	
20	THE COURT: What does that mean, correlated with the		20	he was supposed to be doing his job. I think that's relevant	
21	stocks at issue?		21	in 2009 to the circumstances under which he was no longer doing	
22	MR. FISHBEIN: Because it's a basket of stocks. For		22	an effective job. And you may even recall that he said he	
23	example, semiconductor holders, a huge chunk of that is Texas		23	rejected it, Mr. Newman's offer to run his own book because he	
24	Instruments and AMD. What he said is that like a proxy if you		24	wanted to focus on Mr. Newman's book, didn't want to be	
25	have good news about Intel you might trade in the ETF. He said		25	distracted by having his own. Here he is, he does have his own	

CBKFNEW1	Trial	Page 1029	CBKFNEW1	Trial	Page 1031
1	book which is his personal book and he's spending huge amounts		1	Because he said I can't remove the information I got	
2	of time on it. Again, this is not going to be long. This is		2	from my decisions on the ETFs.	
3	going to be ten minutes where I just want to establish those		3	Then he said, "Meaning on a day-to-day basis we're	
4	two points.		4	doing research, we're talking to a number of different	
5	THE COURT: I think the latter point is one that can		5	companies as we discussed, sometimes inside information. That	
6	be established. I don't know why we need extrinsic evidence to		6	collective information could help derive an opinion on which	
7	do it unless he's disputing that he didn't spend a lot of time.		7	way an exchange traded fund is going to go. For instance,	
8	The first point I think is a little bit hard to follow. I		8	semiconductor index, that's the one we're talking about, is an	
9	mean, you're basically saying that he's trading in ETFs, which		9	index that I traded. If I'm talking to a number of	
10	I'm not sure I fully understand what they are, some of which		10	semiconductor stocks and they're all saying business is great I	
11	involve the stocks of companies that he has access to inside		11	may buy the semi conductor index."	
12	information on and because he's lost money on those, that one		12	THE COURT: That's not saying it's inside information.	
13	can infer from that that the information wasn't useful and		13	That's just saying that's where he's focused.	
14	wasn't good? That would seem to me to be an equally		14	MR. FISHBEIN: We're trying to say that his	
15	supportable inference is that the other stocks that make up		15	information about Intel, AMD, Texas Instruments was not very	
16	that bundle tanked.		16	good. He claims he has special, unique, useful information --	
17	MR. FISHBEIN: Except for he said that they're		17	THE COURT: None of the indictment involved -- is the	
18	correlated and I'll ask him that question.		18	indictment involving Intel, Texas Instruments and AMD?	
19	THE COURT: They're correlated because apparently the		19	MR. FISHBEIN: If we can agree that those stocks are	
20	Intel stock is in the bundle of stocks. That would be a		20	out of the case, we won't do it.	
21	correlation but it doesn't explain -- I mean, I think it really		21	MS. APPS: Your Honor, there was evidence, testimony	
22	is not a plausible inference to assume that his information was		22	about -- the indictment has two sets of substantives; Dell and	
23	no good because the bundle of stocks lost money.		23	Invidia. It also as a conspiracy charge. First of all, on	
24	MR. FISHBEIN: In fairness, he said it's more than		24	Intel and AMD what the government actually elicited was --	
25	that Intel is in there. First of all, these are not like		25	THE COURT: What page of the transcript is this in?	
CBKFNEW1	Trial	Page 1030	CBKFNEW1	Trial	Page 1032
1	mutual funds that have 50 stocks. It's a relatively small		1	MR. FISHBEIN: 540.	
2	number.		2	THE COURT: What day?	
3	THE COURT: Well, what is it? What is it?		3	MR. FISHBEIN: November 15.	
4	MR. FISHBEIN: I'll tell you. Hold on. But he		4	THE COURT: This is in connection with -- he's asked	
5	testified, he testified that you would trade these ETFs based		5	about his own personal trading, asked whether he's lost money,	
6	on what you thought Intel and some of these other things would		6	he said he's lost a lot of money, about 450,000. What was the	
7	do.		7	basis on which you made the trading decisions in your account	
8	MS. APPS: I think he testified more like it was along		8	with respect to these exchange traded funds? It was day	
9	the lines of look, I'm not denying I got a bunch of inside		9	trading, market speculation, sometimes on a minute-by-minute	
10	information in my job and that somehow removed that when I was		10	basis. Is he saying that he used inside information as a basis	
11	doing my personal trading, but I think the larger point here is		11	for trading in there?	
12	the correlation point that your Honor points out because Intel		12	MR. FISHBEIN: If you go down to 540 he says he is	
13	is one stock in one of these ETFs there's lots of other stocks		13	using the information he got from these stocks.	
14	and there are different reasons for trading ETFs than you would		14	THE COURT: Where? 540 what line?	
15	trade other stocks --		15	MR. FISHBEIN: The question is line 1 and 2 and the	
16	THE COURT: And Dell is not one of these stocks? It's		16	answer starts at line, 3 but it's really at the end there where	
17	not a stock in there?		17	he says, "For instance, semiconductor index is an index that I	
18	MR. FISHBEIN: Semiconductor holders, 38 percent of it		18	traded."	
19	is Intel, Texas Instruments and AMD.		19	THE COURT: What line, for instance?	
20	MS. APPS: But the point is we didn't have to go into		20	MR. FISHBEIN: Line 8. And I'll ask him, your Honor,	
21	what is that ETF, how they move. It's just a sort of a side		21	I'll ask him whether Intel is correlated. If he says no then I	
22	show, we could say.		22	guess the line of argument won't have much weight, but I should	
23	MR. FISHBEIN: Here's what he testified to.		23	be able to pursue it.	
24	"Q. You said I don't mean to say I would remove anything about		24	THE COURT: I'm not sure what the argument is. The	
25	stocks. What do you mean by that?"		25	argument is he should have done better in his day trading?	

CBKFNEW1	Trial	Page 1033	CBKFNEW1	Trial	Page 1035
1	MR. FISHBEIN: He says he has unique access.		1	Mr. Newman, but when he uses it himself he loses money.	
2	THE COURT: Where does it say he has unique access?		2	THE COURT: And the next question on redirect or	
3	What are you talking about?		3	perhaps on cross is if this was such great information why did	
4	MR. FISHBEIN: When we talked about Intel he said he		4	you lose money? Then we're going to have all kinds of	
5	spoke to Lacey Higgins who had a source at Intel that gave him		5	speculation about what the other stocks did and call somebody	
6	unit and pricing information. When we talked about Texas		6	in for that and have a whole side trial on that?	
7	Instruments and AMD he said he talked to PGR that gave him		7	MR. FISHBEIN: He's going to answer.	
8	various revenue information, and in each case he was asked		8	THE COURT: How is he going to answer? He's going to	
9	whether it was public or non-public he said it was confidential		9	answer, yeah, well, some other stock, I don't know, some stock	
10	non-public.		10	he doesn't have inside information on is in the, what is it,	
11	THE COURT: Where in here does it say he relied in his		11	EFC?	
12	personal trading on inside information?		12	MR. FISHBEIN: ETF.	
13	MR. FISHBEIN: Here, again, it's that same answer,		13	THE COURT: ETF, tanked. I just think this is an	
14	because she said what do you mean by not removing information		14	utter side show.	
15	from your mind when you're trading these stocks and he says		15	MR. FISHBEIN: Your Honor, for what it's worth, the	
16	meaning on a day-to-day basis we're doing research, we're		16	government elicited it. They elicited it. They elicited that	
17	talking to a number of different companies, we're getting		17	he had ETFs, they elicited it was correlated, they elicited he	
18	information, as we have discussed sometimes inside information.		18	was using inside information when he was making the trading	
19	That's lines 5 and 6.		19	decisions.	
20	For what it's worth, your Honor, I have one, two,		20	THE COURT: I don't think it's elicited to show how	
21	three, four, five questions on this subject in my outline. I		21	accurate and useful his information was, I think it's offered	
22	was going to spend more time on the other issue we talked		22	to show his intent was impure. If you want to ask questions	
23	about, which is the distractions, because there are some other		23	about intent, that's fine, but I think you're asking a	
24	e-mails in which he says that his state of mind was that he was		24	different set of questions to show that he didn't actually have	
25	extremely distracted. This is going to be a second point. It		25	inside information and that can be inferred from the fact that	
CBKFNEW1	Trial	Page 1034	CBKFNEW1	Trial	Page 1036
1	will be short and it's simply going to be that you said you		1	these bundles of funds, the funds that are bundles of stock	
2	used some of this inside information in connection with these		2	didn't make money.	
3	purchases, you lost this money and that's really a point we're		3	MR. FISHBEIN: Actually, to be precise, it's that he	
4	going to make.		4	didn't have useful information. We obviously contend that it	
5	THE COURT: What are you going to ask him; why did you		5	was not inside information, okay? Our defense doesn't think	
6	lose money?		6	any of this is inside information, okay? What we're saying is	
7	MR. FISHBEIN: No, we're going to establish that he		7	that they're arguing as a factual matter that it's useful and	
8	lost the money, we're going to establish that this particular		8	we're arguing countering that, that it's not useful. That's	
9	ETF had a big chunk of Intel, Texas Instruments and AMD.		9	the issue. It's not useful to him --	
10	THE COURT: And the inference to be drawn from that is		10	THE COURT: I'm going to instruct the jury that it	
11	he couldn't actually have had the information because people		11	doesn't have to be, you don't have to make money to be guilty	
12	with inside information only make money. That's not the		12	of insider trading. So your defense is that this guy didn't	
13	argument?		13	engage in any insider trading, that's your defense, that he	
14	MR. FISHBEIN: We're going to counter the argument		14	mistakenly pled guilty to it, but it wasn't inside information.	
15	that this was unique and useful information. It's obviously		15	MR. FISHBEIN: Certainly with Intel and these other	
16	not very useful if he was correlating ETFs and didn't make		16	stocks. There's going to be more now, we're going to show a	
17	money.		17	lot of this information was public, that is our defense, yes.	
18	THE COURT: It might have been extremely useful, it		18	And I think it certainly goes to the weight of how useful	
19	could have offset the other stocks that he didn't have inside		19	something is as to whether you make money or not. It may not	
20	information on.		20	be a complete defense, but it's relevant whether you make	
21	MR. FISHBEIN: I think that really goes to the weight,		21	money, the utility. Really, your Honor, we're spending more	
22	your Honor. We have the argument that we have this		22	time arguing about it than if we cover it.	
23	information, it's useful, we're using it to trade and make		23	THE COURT: That may be. I'm going to look at my	
24	piles of money, he's doing it himself, he's the one who is		24	instructions because I don't think usefulness is going to be	
25	supposedly getting the information directly and sharing it with		25	the key word.	

<p>CBKFNW1 Trial Page 1037</p> <p>1 MR. FISHBEIN: Materiality refers to whether it's 2 going to be useful in making trading decisions. 3 THE COURT: They're here. When are we going to get to 4 this? 5 MR. FISHBEIN: Later. 6 THE COURT: Just flag it when we get to it. I may ask 7 questions too that relate to lines 4 through 8 of page 540, but 8 I really don't want to have a side show about why it was that 9 he lost money in his personal trading accounts. 10 MR. FISHBEIN: And, your Honor, I take it that the 11 other issue, the distraction, the hundreds of options trades, 12 that I am going to inquire about -- 13 THE COURT: To the extent that he has testified that 14 the reason he fell out of favor was because of his, after 15 Galleon inside tips dried up was another reason, actually, I 16 think that door has been opened up. 17 MS. APPS: Your Honor, I think this can be very 18 confusing to the jury so we may ask your Honor to give the 19 instruction that your Honor talked about if Mr. Fishbein goes 20 there? 21 THE COURT: We'll see about what instruction will be 22 appropriate. I may have to formulate it based on the 23 testimony. Let's get Mr. Tortora out and let's get the jury 24 in. 25 (Continued on next page)</p>	<p>CBKFNW1 Tortora - cross Page 1039</p> <p>1 quarter was announced, is that right? 2 A. Mr. Kuo's information or just the general, the general 3 expectation? 4 Q. Remember we went over some e-mails in which Mr. Kuo said 5 that the company looked like they were going to exceed 6 expectations on revenue. Do you recall that? 7 A. Yes. 8 Q. And then you said at some point before the quarter was 9 announced that information got out into the marketplace? 10 A. Yes, that's fair. 11 Q. How did that information get into the marketplace, if you 12 know? 13 A. Well, first off, that's my opinion that it got into the 14 marketplace. I could never know conclusively, but what I do 15 recall is that the stock had been going up and I saw various 16 reports that Invidia was going to significantly beat on the 17 revenue or was tracking to beat on the revenue for the quarter. 18 You had shown me some of those reports so that was just my best 19 assumption at that time. 20 Q. What kind of reports are you referring to? 21 A. Well, there was a combination of e-mails, conversations, 22 sell side reports, etc. 23 Q. So that would include analyst reports that have the same 24 information that you were getting from Mr. Kuo? 25 A. With respect to the revenue in this particular case?</p>
<p>CBKFNW1 Trial Page 1038</p> <p>1 (In open court; jury present) 2 JESSE TORTORA, 3 called as a witness by the Government, 4 having been previously duly sworn, testified as follows: 5 THE COURT: Well, we've lost a bit of time again. 6 Again, make sure you build in time to get here and make sure 7 you call us if you're in trouble. Again, that may be hard in 8 the subway, but that gives us little alternative but to sit 9 around. 10 So we're going to resume the cross-examination of Mr. 11 Tortora by Mr. Fishbein and I think maybe we will, unless 12 somebody really needs to go to the bathroom, I think we're 13 probably going to skip a morning break. If you're 14 uncomfortable raise your hand and we'll take a short break but 15 I think we want to use as much time as we can since we've lost 16 about 40 minutes. Okay? 17 Mr. Fishbein, you may proceed. 18 CROSS-EXAMINATION 19 BY MR. FISHBEIN: (Continued) 20 Q. Mr. Tortora, when we ended yesterday, we were talking about 21 the Invidia quarter ended April of 2009 that was reported on 22 May 7, 2009. Do you recall that? 23 A. Yes. 24 Q. And you mentioned that at some point Mr. Kuo's information 25 of a significant revenue beat got into the market before the</p>	<p>CBKFNW1 Tortora - cross Page 1040</p> <p>1 Q. Yes. 2 A. Yes. 3 Q. Did you yourself deal with the investor relations 4 department at Invidia? 5 A. I have spoken to him in the past, but I had not that much 6 interaction with him relative to other investor relation 7 departments. 8 Q. Him is Mr. Hara, right? 9 A. Yes. 10 Q. Did you hear that Invidia investor relations was known as 11 the leaky ship? 12 MS. APPS: Objection. 13 THE COURT: Overruled. You can answer. 14 A. Your Honor, I have not heard that. 15 Q. Have you had experience in your time as an analyst in 16 situations in which information gets out of a company and then 17 quickly spreads among sell side analysts and others in the 18 financial community? 19 A. Mr. Fishbein, I think you'd have to give me a specific time 20 that you're referring to. Even in this case, the case at hand, 21 it's unclear if information got out or the belief of the market 22 just became different, meaning we talked about higher revenues. 23 Did the company, did it get out that they were actually 24 tracking to high revenues or did people just start believing 25 that and rumors became the norm?</p>

<p>CBKFNEW1 Tortora - cross Page 1041</p> <p>1 Q. But in any event, your recollection is that that 2 information about the higher revenues, you saw that in a number 3 of sources other than Mr. Kuo, is that right? 4 A. That's right. 5 Q. And that's before Invidia announced its quarterly results? 6 A. Yes, it was during the quarter. 7 Q. The other piece is gross margin which I think you testified 8 on direct, is that right? 9 A. Yes. 10 Q. And specifically that Invidia's gross margin was going to 11 be weaker, that was the information? 12 A. Yes. 13 Q. Isn't that something that you also got reports on that the 14 market knew about? 15 A. I don't recall. 16 Q. Let's look at Defense Exhibit 2146 which is your tab 214. 17 A. Okay, I found the exhibit. 18 Q. Do you recognize that as a report that you and Mr. Newman 19 received from a gentleman named Souza? 20 A. Yes. 21 Q. And it refers to, it's reported to refer to a conversation 22 with Invidia investor relations, correct? 23 A. Yes. 24 Q. That's in March of 2009, the quarter that we're talking 25 about, correct?</p>	<p>CBKFNEW1 Tortora - cross Page 1043</p> <p>1 Q. You understood that investor relations was authorized to 2 meet with people like Mr. Souza, correct? 3 A. Right. 4 Q. If we look at the e-mail, the very top says, "Sounds bad. 5 Said 09 will suck. Pessimism on and demand, low visibility. 6 Stabilization in February but no demand pick up. Not clear 7 what level they can get margins back to." Right? 8 A. Yes. 9 Q. So you understood this to be a negative report, right? 10 A. Your Honor, can I request that we put the Invidia earnings 11 exhibit up here so I can get my bearings about the date just 12 like we did with Dell? 13 THE COURT: All right, that's fine. 14 MR. FISHBEIN: That's fine. 15 A. Mr. Fishbein, just, you said this e-mail was on the quarter 16 that you're referring to ending April 26 reporting May 7, is 17 that correct? 18 Q. Right. 19 A. And this is a March 3rd e-mail, which was roughly three 20 weeks after they reported the prior quarter on February 10. 21 Q. All right, but just so we're clear, the quarter is 22 February, March, April, right? 23 A. That's right, it's roughly one month into the quarter. I'm 24 just getting my bearings. 25 Q. So my question is, you understood that to be a negative</p>
<p>CBKFNEW1 Tortora - cross Page 1042</p> <p>1 A. Yes. 2 MR. FISHBEIN: Defense offers Exhibit 2146. 3 MS. APPS: No objection. 4 THE COURT: All right, defense Exhibit 2146 is 5 received. 6 (Defendant's Exhibit 2146 received in evidence) 7 Q. Mr. Tortora, who is Mr. Souza? 8 A. John Souza was my former boss at Intel. He also worked for 9 me at Prudential and he did consulting for Todd and me at 10 Diamondback. 11 Q. At this time he was a consultant for Diamondback, right? 12 A. That's correct. 13 Q. One of the things he did was take meetings for companies 14 and report back results to you, correct? 15 A. That's correct. 16 Q. Was he located on the east coast or west coast? 17 A. West coast. 18 Q. Where is Invidia located? 19 A. West coast. 20 Q. So it would make sense if there was contact with Invidia 21 investor relations he would be the one to do it, right? 22 A. Yes. 23 Q. Here he's giving you a report about Invidia investor 24 relations? 25 A. That's correct.</p>	<p>CBKFNEW1 Tortora - cross Page 1044</p> <p>1 report, correct? 2 A. Yes. 3 Q. And what did you understand the phrase "not clear what 4 level they can get margins back to" to mean? 5 A. How I interpret that now is perhaps margins were at a lower 6 level the prior quarter than they had been in the past and 7 they're not clear what level they can get those back up to. 8 Q. So there's uncertainty as to whether they can get margins 9 back up, right? 10 A. That's correct. 11 Q. And if you look further down the page to the paragraph 12 starting "margins," do you see that? 13 A. Yes. 14 Q. It says, quote, "Margins have been hit by collapse of work 15 station demand (down 45 percent no sign of pick up), higher mix 16 to chipsets. Drop in DT margins. DT only place that margins 17 actually dropped, rest was mix," end quote. Do you see that? 18 A. Yes. 19 Q. Do you understand that work station is a product that 20 Invidia sells? 21 A. Yes. 22 Q. And work stations were their highest margin product, right? 23 A. I'm not a hundred percent sure if it was their highest 24 margin product, but it was a high margin product. 25 Q. So if demand goes down for a high margin product that</p>

CBKFNEW1	Tortora - cross	Page 1045	CBKFNEW1	Tortora - cross	Page 1047
1	adversely affects the company's margin, correct?		1	Q. Now, this was not the day before the quarterly announcement	
2	A. Yes.		2	on August 28, 2008, correct?	
3	Q. And then it says "higher mix to chipsets." Did you		3	A. Right.	
4	understand chipsets were also a product that Invidia sold?		4	Q. In fact, it wasn't even in August, right?	
5	A. Yes.		5	A. It was not in August.	
6	Q. And that is a lower margin product, right?		6	Q. It was in July. So that's a month before, right?	
7	A. Yes.		7	A. That is. However, there was -- then I correct my statement	
8	Q. So if the mix of your sales goes towards more lower margin		8	to you earlier, then. There was another comment the day before	
9	products and fewer higher margin products your margin suffers,		9	earnings.	
10	right?		10	Q. Okay, so what you had in mind during the testimony	
11	A. Yes.		11	yesterday was this article, is that right?	
12	Q. And then it says, "Drop in DT margins." You understood		12	A. No. No, no, no. I correct my statement. There was	
13	that to be drop in desktop margins, correct?		13	another comment out of Michael Dell, a positive comment the day	
14	A. Yes.		14	before earnings.	
15	Q. And this information you received before the quarter		15	Q. Do you think it was an article?	
16	reported on May 7, 2009, right?		16	A. I don't. I actually think it was commentary that hit the	
17	A. I don't agree with that statement.		17	wires, hit Bloomberg or the other news sources, and I recall	
18	Q. Did you receive this e-mail -- I mean, you received it		18	reviewing an e-mail between Todd and myself talking about that	
19	before May 7, 2009, right?		19	comment.	
20	A. I received the e-mail but the context of the e-mail appears		20	Q. So, in other words, I'm not going to be able to find an	
21	to be past tense. Referring to the prior quarter.		21	article on August 27 quoting Michael Dell?	
22	Q. At the very top it says "sounds bad," right?		22	A. There won't be an article, correct.	
23	A. Yes, but I'm referring to the lines you're pointing me to		23	Q. And you believe there's an e-mail?	
24	that we're reading.		24	A. I believe there's an exhibit.	
25	Q. Let me just ask you a question. The top it says "sounds		25	Q. In this case?	
CBKFNEW1	Tortora - cross	Page 1046	CBKFNEW1	Tortora - cross	Page 1048
1	bad," right?		1	A. Yes.	
2	A. Yes.		2	Q. Was it shown to you on direct?	
3	Q. Then it said "09 will suck," right?		3	A. I don't recall. But I remember having seen that.	
4	A. Yes.		4	Q. And you believe that was for August, not May?	
5	Q. And you understood 09 to be 2009, right?		5	A. That's correct.	
6	A. Yes.		6	Q. Now, two other stocks that you mention were Texas	
7	Q. Let me switch topics. Mr. Tortora, yesterday we talked		7	Instruments and AMD. Do you recall that?	
8	about comments that Michael Dell made the day before the Dell		8	A. Yes.	
9	announcement on May 29, 2008. Do you recall that?		9	Q. And those were both stocks where the information you talked	
10	A. Yes.		10	about came from experts with this PGR network, correct?	
11	Q. And you said you thought that Mr. Dell did the same thing		11	A. Yes.	
12	the following quarter, that there were comments the day before.		12	Q. And PGR referring to Primary Global Research, right?	
13	Do you remember that?		13	A. Yes.	
14	A. Yes.		14	Q. Which is as we talked about a company that matched up	
15	Q. So that would be the August quarter that reported on		15	experts in various fields with analysts like yourself, right?	
16	August 28, right?		16	A. Yes.	
17	A. Yes.		17	Q. And during this period, 2007 to 2009, PGR was a well-known	
18	Q. Now, did you have in mind the Business Week article that		18	company in the industry, correct?	
19	Ms. Apps showed you on direct?		19	A. Yes.	
20	A. Yes.		20	Q. And there were other companies like it, right?	
21	Q. If you could look at Government Exhibit 211, it's in front		21	A. Yes.	
22	of you, it's in evidence, perhaps we could put it up on the		22	Q. Some of the other companies were GLG?	
23	screen. Government Exhibit 211 is an e-mail and within it is a		23	A. Yes.	
24	Business Week article that quotes Michael Dell, correct?		24	Q. Vista?	
25	A. Yes.		25	A. Yes.	

CBKFNEW1	Tortora - cross	Page 1049	CBKFNEW1	Tortora - cross	Page 1051
1	Q. Coleman?		1	A. Yes.	
2	A. Yes.		2	Q. So it describes the service?	
3	Q. And TriBeCa?		3	A. Yes.	
4	A. TriBeCa may have come on later.		4	Q. It says, "At this time we would like to sign up for a	
5	Q. But it was sometime in that period?		5	single user license for \$5,000 a month." Do you see that?	
6	A. Yes.		6	A. Yes.	
7	Q. They all provided this service, matching analysts with		7	Q. And it says, "I will be that user for our team." Do you	
8	industry experts, right?		8	see that?	
9	A. Yes.		9	A. Yes.	
10	Q. Now, Diamondback permitted the use of these experts,		10	Q. So does that reflect that you're the one that had the	
11	correct?		11	interaction with the PGR experts?	
12	A. Yes.		12	A. Yes. I was doing calls with them, yes.	
13	Q. I think you said that you first started using PGR after		13	Q. And to your knowledge Mr. Newman didn't do any calls with	
14	Mr. Abbasi did, right?		14	PGR, right?	
15	A. I believe so, yes.		15	A. I don't know that.	
16	Q. And was he the one that gave you the idea that they might		16	Q. But you don't have any affirmative recollection that he	
17	be useful?		17	did, right?	
18	A. I'm not sure. That may have been how I learned about PGR.		18	A. No, I don't know either way.	
19	Q. And then at Diamondback, you're the one that managed the		19	Q. Then you say further, "I believe there are already two	
20	PGR relationship for Todd's team at Diamondback, is that		20	users of this service at Diamondback," and you mention some	
21	correct?		21	names, right?	
22	A. It was a mix. I had interaction with the salesperson from		22	A. Yes.	
23	PGR, but Todd had the authority in approving the money and the		23	Q. As a matter of fact, there were several people at	
24	amount, the terms.		24	Diamondback that already were using this PGR service, is that	
25	Q. Let's look at Defense Exhibit 8700. It's your tab 232.		25	correct?	
CBKFNEW1	Tortora - cross	Page 1050	CBKFNEW1	Tortora - cross	Page 1052
1	I'm sorry, 231. Is this an e-mail from you to Mr. Newman and		1	A. There were others. I don't know how many.	
2	others about PGR?		2	Q. So it wasn't unique to Mr. Newman's team, correct?	
3	A. Yes.		3	A. That's right.	
4	MR. FISHBEIN: Defense offers Exhibit 8700.		4	Q. You understood that PGR was reviewed by the compliance	
5	MS. APPS: No objection.		5	department at Diamondback before you could use PGR, right?	
6	THE COURT: Defense Exhibit 8700 is received.		6	A. As a firm, yes.	
7	(Defendant's Exhibit 8700 received in evidence)		7	Q. And in fact, Diamondback the firm had compliance, the	
8	Q. The date of this, Mr. Tortora, is March 31, 2008. Do you		8	compliance department review all consultants before you sign	
9	recall that's when you brought, that's when your team started		9	them up, right?	
10	using PGR?		10	MS. APPS: Objection.	
11	A. Sounds like.		11	THE COURT: Do you know that?	
12	Q. And who is Ms. Valouktzis to whom you sent this?		12	THE WITNESS: I don't know that, your Honor.	
13	A. Betty was someone who worked in the Diamondback human		13	Q. The consultants that you had experience with, was it your	
14	resources department.		14	experience that they were vetted by compliance?	
15	Q. And how about Ms. Magee who is the CC?		15	A. I understood the expert networking firms to be. I don't	
16	A. She was in HR.		16	know about the consultants.	
17	Q. Does she also have a compliance role?		17	Q. You don't know one way or the other?	
18	A. I'm not sure.		18	A. I don't, and I didn't see the affirmative, as you say.	
19	Q. But in any event you were not trying to hide the fact that		19	Q. With respect to the consulting, the expert firms, do you	
20	you were using PGR, right?		20	recall that in 2009 you sought to bring on another one called	
21	A. No.		21	TriBeCa?	
22	Q. In the e-mail you see it starts with the fact we'd like to		22	A. Yes.	
23	bring on PGR, correct?		23	Q. And do you remember in that connection having a discussion	
24	A. Yes.		24	with Mr. Newman about the compliance process for bringing on a	
25	Q. So this is when it started?		25	consulting firm?	

CBKFNEW1	Tortora - cross	Page 1053	CBKFNEW1	Tortora - cross	Page 1055
1	A. Yes.		1	(Continued next page)	
2	Q. If we can look at Defense Exhibit 8985, it's your tab 234.		2		
3	Is that an e-mail from you to Mr. Newman and others on March 4,		3		
4	2009 about due diligence with respect to the TriBeCa firm?		4		
5	A. Maybe I'm not seeing that. Exhibit 8985?		5		
6	Q. Yes, you see at the bottom there's some correspondence with		6		
7	TriBeCa?		7		
8	A. No, I have the exhibit, I'm just not finding where I'm		8		
9	involved here.		9		
10	Q. If you look towards the top, it's the second e-mail from		10		
11	the top.		11		
12	A. Okay, out of this one e-mail, yes. There's one piece of		12		
13	this six-page document where I'm sending e-mail to Todd and		13		
14	others.		14		
15	Q. But you're forwarding the ones below it, right?		15		
16	A. So when I reply I guess the rest are forwarded. Yes, okay.		16		
17	Q. Okay.		17		
18	MR. FISHBEIN: Defense offers Exhibit 8985.		18		
19	THE COURT: Any objection?		19		
20	MS. APPS: No objection.		20		
21	THE COURT: Defense 8985 is received.		21		
22	(Defendant's Exhibit 8985 received in evidence)		22		
23	Q. And what you're doing is here you write to Mr. Newman, and,		23		
24	by the way, who is Peter Wade?		24		
25	A. I don't know his position, but he held a high-level		25		
CBKFNEW1	Tortora - cross	Page 1054	CBKMNEW2	Tortora - cross	Page 1056
1	position at Diamondback.		1	Q. I believe you said the PGR expert at AMD was Tony, is that	
2	Q. You write to them and you say, "These guys working to try		2	right?	
3	to meet our compliance requirements." By these guys you're		3	A. Yes.	
4	referring to TriBeCa, right?		4	Q. Did you speak to him yourself?	
5	A. Yes.		5	A. I did.	
6	Q. Which was another expert network, right?		6	Q. When you spoke to him yourself did you do notes about it?	
7	A. Yes.		7	A. I did.	
8	Q. Then you say, "I believe there's a strong business case to		8	Q. If you could go to Government Exhibit 1455. It's your tab	
9	use them, but I know they need to clear our compliance		9	259.	
10	requirements first consistent with the other firms we use; GLG,		10	THE COURT: 259, did you say?	
11	PGR, Vista, etc." Do you see that?		11	MR. FISHBEIN: 259. Government Exhibit 1455.	
12	A. Yes.		12	Q. Do you see, Mr. Tortora, that this is an e-mail from you to	
13	Q. So you're particularly noting that PGR had to go through a		13	Mr. Newman, subject AMD, call that you then forward to others?	
14	compliance process, right?		14	A. Yes.	
15	A. Yes.		15	MR. FISHBEIN: Defense offers Exhibit 1455.	
16	Q. And that was an e-mail that was sent to Mr. Newman,		16	MS. APPS: No objection.	
17	correct?		17	THE COURT: Mr. Weingarten, I have not been asking	
18	MS. APPS: On the screen, could you just bring down,		18	you, but if you are objecting, you will let me know.	
19	make the box a little bit larger so it's not concealing the		19	Government Exhibit 1455 is received.	
20	part underneath it?		20	(Government's Exhibit 1455 received in evidence)	
21	MR. FISHBEIN: Actually, we're moving on.		21	Q. What is this, Mr. Tortora?	
22	MS. APPS: Just so you can see what's underneath the		22	A. This appears to be a summary that I did with the PGR expert	
23	e-mail?		23	from AMD.	
24	THE COURT: It's in evidence.		24	Q. I guess you started off saying that the overall tone sounds	
25	MR. FISHBEIN: They can do that. Okay.		25	much better than has been in years, is that right?	

CBKMNEW2	Tortora - cross	Page 1057	CBKMNEW2	Tortora - cross	Page 1059
1	A. Yes.		1	A. One of the main reasons you talk to investor relations is	
2	Q. And then if you look about two-thirds down the page it		2	to gauge their tone and body language, as I've said over and	
3	says: GM 42 percent in Q1 and then there is some details about		3	over again, and it's your interpretation of how they are saying	
4	gross margin, is that right?		4	something. Do they sound positive, do they sound shaky on	
5	A. Yes.		5	something, et cetera.	
6	Q. Are you sure this is with the PGR expert?		6	Q. From that you concluded that they would be profitable in	
7	A. No, I'm not.		7	the coming quarter and the following, right?	
8	Q. You had a contact at AMD named Ruth Cotter, didn't you?		8	A. The way she was answering the questions, which were	
9	A. Ruth was investor relations head there.		9	consistent with their prior messaging, I believed I heard	
10	Q. Aren't these notes of a conversation you had with investor		10	conviction in her voice.	
11	relations?		11	Q. When you said, which is changed from prior, what did you	
12	A. I don't think I clearly specify here who this is with. But		12	mean by that?	
13	if I look through the details now, then it most likely is. It		13	A. I don't remember what I meant, but if I'm interpreting this	
14	seems much less specific where the FGR expert, Tony, was giving		14	e-mail, perhaps they weren't saying it with such authority,	
15	specific information on the quarter and this looks like more		15	but, again, that's just my interpretation. I don't remember at	
16	like a call that matches one I would have with Ruth.		16	the time.	
17	Q. I may be able to help you with this, Mr. Tortora. If you		17	Q. Would it be fair to say that perhaps she was telling you	
18	look at Defense Exhibit 10025. It's your tab 261. Why don't		18	something that was different than what you had understood	
19	you just take a look at it to refresh your memory. See if that		19	previously?	
20	refreshes your memory that in fact this is a call with Ruth		20	A. Not in this case because the which is changed from prior is	
21	Cotter of investor relations?		21	referring to saying this with conviction, not the messaging of	
22	A. Yes.		22	profitability or the gross margin.	
23	Q. Does that refresh your memory?		23	Q. By the way, Mr. Tortora, this was a one-on-one conversation	
24	A. Yes. It doesn't refresh my memory, but it shows it's on		24	that you had with Ms. Cotter, right?	
25	the same date, setting up the call.		25	A. That's correct.	
CBKMNEW2	Tortora - cross	Page 1058	CBKMNEW2	Tortora - cross	Page 1060
1	Q. If we look again at that gross margin information it says		1	Q. You understood Ms. Cotter to be authorized to have this	
2	GM 42 percent in Q1. That's the prior quarter, right?		2	discussion with you, correct?	
3	A. Yes.		3	A. Yes.	
4	Q. And then she tells you they are sticking to plan for 46 to		4	Q. And you never gave Ms. Cotter any personal benefits to	
5	50 percent for the full year and you compare it to the street,		5	speak to you, right?	
6	and saying this with conviction.		6	A. No.	
7	Do you see that?		7	Q. Let's turn to Texas Instruments. And I believe you said	
8	A. Yes.		8	that the information you got was from a gentleman by the name	
9	Q. And so you understood her to be giving you some conviction		9	of Tyson?	
10	from the company's point of view about their gross margin,		10	A. Yes.	
11	right?		11	Q. If you could look at Government Exhibit 1414, it's your tab	
12	A. The way I write this is they are sticking to a plan, which		12	271.	
13	means they had prior forecasted a plan for gross margin in a		13	If you look at the top e-mail, is that an e-mail from	
14	public forum.		14	you to Mr. Newman, re text TXN, August 14, 2009?	
15	Q. And then it says: Will be profitable in Q3 and Q4.		15	A. Yes.	
16	What did you mean by that?		16	MR. FISHBEIN: Defense offers Government Exhibit 1414.	
17	A. Earnings positive. Again, likely -- I don't recall, but		17	MS. APPS: No objection.	
18	the way I wrote it appears that it's something that that they		18	THE COURT: Government Exhibit 1414 is received.	
19	had set prior.		19	(Government's Exhibit 1414 received in evidence)	
20	Q. If you look at the next sentence it says: Saying this with		20	Q. Mr. Tortora, is that a write-up of one of your calls with	
21	conviction, which is change from prior, right?		21	Tyson?	
22	A. Yes. My interpretation of the tone, the body language of		22	A. Mr. Fishbein, now I have to read line by line for a few	
23	how they are saying it, which is a change from prior.		23	minutes. Things are going to be delayed a little bit now.	
24	Q. So this was useful information to get from somebody at the		24	It appears to be, based on the write-up here.	
25	company as to how they view profitability going forward, right?		25	Q. Is this consistent with the type of information that you	

<p>CBKMNEW2 Tortora - cross Page 1061</p> <p>1 receive from Tyson during these calls?</p> <p>2 A. It is certainly consistent. It's two calls here. However,</p> <p>3 I would say that I at some point we began to receive much or I</p> <p>4 began to receive from him much more specific revenue numbers</p> <p>5 which I don't see in these two calls.</p> <p>6 Q. Would it be fair to say that your information from Tyson</p> <p>7 focused on demand and revenue?</p> <p>8 A. Yes.</p> <p>9 Q. And not gross margin or EPS or operating expense?</p> <p>10 A. Not to my recollection, yes.</p> <p>11 Q. If you look at Defense Exhibit 7229. It's tab 272.</p> <p>12 Mr. Tortora, is this an e-mail that you forwarded to</p> <p>13 Mr. Newman reflecting a report for Mr. Adondakis on a</p> <p>14 conversation with Texas Instruments investor relations?</p> <p>15 A. Yes.</p> <p>16 MR. FISHBEIN: Defense offers Exhibit 7229.</p> <p>17 MS. APPS: No objection.</p> <p>18 THE COURT: Defense 7229 is received.</p> <p>19 (Defendant's Exhibit 7229 received in evidence)</p> <p>20 Q. Mr. Tortora, this is exactly the same date as the write-up</p> <p>21 we just looked at with your call with Tyson, right?</p> <p>22 A. Yes.</p> <p>23 Q. So this is information you received the very same day, but</p> <p>24 this is from the investor relations department or at least it's</p> <p>25 attributed to the investor relations department, right?</p>	<p>CBKMNEW2 Tortora - cross Page 1063</p> <p>1 Q. If you look further down do you see there is also</p> <p>2 information about gross margin?</p> <p>3 A. Yes.</p> <p>4 Q. And specifically there are set out several items that</p> <p>5 Mr. Adondakis says will positively affect gross margin, right?</p> <p>6 A. Yes.</p> <p>7 Q. And at the end there is a conclusion: "Overall, positive</p> <p>8 and sounds like tracking to beat and raise for Q3/Q4 on better</p> <p>9 revs, higher GM, and lower opex."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Did you understand beat and raise for Q3/Q4 to refer to</p> <p>13 earnings for the current quarter or the next quarter?</p> <p>14 A. Yes. Again, unclear if that's Sam's interpretation or</p> <p>15 something they said.</p> <p>16 Q. It then says that revs means revenues, right?</p> <p>17 A. Yes.</p> <p>18 Q. Higher GM means gross margin, right?</p> <p>19 A. Yes.</p> <p>20 Q. And lower opex means operating expense, right?</p> <p>21 A. Yes.</p> <p>22 Q. And this was all the same day as the report you got from</p> <p>23 Tyson, right?</p> <p>24 A. Yes.</p> <p>25 Q. But Tyson didn't tell you anything about gross margin,</p>
<p>CBKMNEW2 Tortora - cross Page 1062</p> <p>1 A. Yes.</p> <p>2 Q. And was it your understanding that Mr. Adondakis had had a</p> <p>3 conversation with investor relations at Texas Instruments?</p> <p>4 A. I'm not sure where -- I am not sure if he had a meeting or</p> <p>5 he was listening to a presentation.</p> <p>6 Q. But you believe that whatever it was, he was getting</p> <p>7 information from investor relations, right?</p> <p>8 A. Yes.</p> <p>9 Q. And those letters there, IR, that stands for investor</p> <p>10 relations, right?</p> <p>11 A. Yes.</p> <p>12 Q. And the information that was conveyed included how the</p> <p>13 current quarter was tracking, right, at the very top? You see</p> <p>14 that? Sounds like Q3 tracking data.</p> <p>15 A. Just from reading that particular line I interpret that --</p> <p>16 I don't know if that means something was said or that is Sam's</p> <p>17 read of body language and tone.</p> <p>18 Q. Fair enough.</p> <p>19 In other words, in this you don't know exactly what</p> <p>20 came from investor relations and what part of it is</p> <p>21 Mr. Adondakis' interpretation, right?</p> <p>22 A. That's correct.</p> <p>23 Q. But it does include a statement, sounds like Q3 tracking</p> <p>24 better versus guidance, correct?</p> <p>25 A. Yes.</p>	<p>CBKMNEW2 Tortora - cross Page 1064</p> <p>1 opex, or profits, right?</p> <p>2 A. No, he did not.</p> <p>3 Q. If you could now look at Defense Exhibit 9165. And there</p> <p>4 is a loose pile of what's called additional documents in front</p> <p>5 of you and it's in there. It's Defense Exhibit 9165.</p> <p>6 A. Yes, I got it.</p> <p>7 Q. Do you recognize this as an e-mail that you sent to</p> <p>8 Mr. Newman re Texas Instruments forwarding information from</p> <p>9 Mr. Kuo?</p> <p>10 A. Yes.</p> <p>11 MR. FISHBEIN: Defense offers Exhibit 9165.</p> <p>12 MS. APPS: No objection.</p> <p>13 THE COURT: No objection. Defense 9165 is received.</p> <p>14 (Defendant's Exhibit 9165 received in evidence)</p> <p>15 Q. And the information from Mr. Kuo is titled TXN call with</p> <p>16 IR.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Did you understand that to mean that Mr. Kuo attended a</p> <p>20 call with the Texas Instruments investor relations department?</p> <p>21 A. Yes.</p> <p>22 Q. By the way, September 16 of 2009 -- let me take that back.</p> <p>23 Are you aware that Texas Instruments is on a calendar</p> <p>24 quarter?</p> <p>25 A. They are.</p>

CBKMNEW2	Tortora - cross	Page 1065	CBKMNEW2	Tortora - cross	Page 1067
1	Q. So the third quarter is July, August, and September,		1	understand there to be something new in this conversation he	
2	correct?		2	had with investor relations?	
3	A. That's correct.		3	A. Again, the sentence doesn't make that much sense. It's	
4	Q. And September 15, the date of this, is about two weeks		4	clearly talking about gross margin in Q4. That's what I know.	
5	before the quarter ends, right?		5	I can't make heads or tails of it, so I don't want to	
6	A. Yes. However, there is one important distinction to make		6	speculate.	
7	with Texas Instruments. They regularly conducted a mid-quarter		7	Q. Q4 is an upcoming quarter, correct?	
8	update, which means at some point in the middle of the quarter		8	A. Yes.	
9	or actually, I believe, roughly speaking, two of three months		9	Q. If you turn the page, there is a section called GM.	
10	through the quarter, they essentially made a public earnings		10	Do you see that?	
11	announcement.		11	A. Yes.	
12	Q. Do you know if they did that this quarter?		12	Q. Do you understand that to refer to gross margin?	
13	A. I know that was their regular practice. I believe they did		13	A. Yes.	
14	that every quarter. I don't know those dates. But if we were		14	Q. And what is your understanding of what's listed there?	
15	theoretically to look at a chart like this for Texas		15	A. Looks like they are giving the gross margin by business	
16	Instruments, it would be prudent to add those mid-quarter		16	units. Not generally clear if that's historical data or not.	
17	updates.		17	But it looks like it's an approximation of gross margin by	
18	Q. But you don't remember if they did it or, if so, when they		18	business unit, and a comment here about the royalties for 2009.	
19	did it?		19	Q. But the percentages next to those various names, like	
20	A. I don't remember the date, but I just -- I feel like that's		20	wireless, analogue, those are business units of Texas	
21	an extremely important point because that's when information		21	Instruments, yes?	
22	becomes disseminated to the public.		22	A. Yes.	
23	Q. Fair enough. But this would have been after that, right?		23	Q. You understood the percentages to be gross margins?	
24	A. This would have been after that, yes.		24	A. Yes.	
25	Q. And this is, again, two weeks before the quarter ends,		25	Q. You understood that Texas Instruments investor relations	
CBKMNEW2	Tortora - cross	Page 1066	CBKMNEW2	Tortora - cross	Page 1068
1	right?		1	was authorized to speak to people like Mr. Kuo?	
2	A. Right. My guess is it would have been two weeks after		2	A. Yes.	
3	that, but that's just an approximation.		3	Q. Did you have any knowledge of Mr. Kuo giving any personal	
4	Q. Now, Mr. Kuo says: Sounds like 3Q tracking 5 to 10 million		4	benefits to anybody at Texas Instruments investor relations?	
5	above the mid point of revenue guide and 4Q tracking to flat Q		5	A. No.	
6	on Q.		6	Q. Let's turn to Altera. You testified that you got	
7	Do you see that?		7	information about Altera from Mr. Kuo, correct?	
8	A. Yes.		8	A. Yes.	
9	Q. And then he says, quote: Biggest surprise from		9	Q. By the way, I think you said that you first met Mr. Kuo in	
10	conversation if the upside in GM for 4Q.		10	the fall of 2007, is that right?	
11	Do you see that?		11	A. I spoke to? Spoke to.	
12	A. Yes.		12	Q. The first time you had contact was fall of '07, right?	
13	Q. And did you understand the if to really be is? Did you		13	A. Yes.	
14	understand that's a typo?		14	Q. That's because you noticed that his analyst reports were	
15	A. How do you know that?		15	accurate, right?	
16	Q. I'm asking you.		16	A. Yes.	
17	THE COURT: Did you understand that to be a typo, is		17	Q. So how did that happen? Did you just call him out of the	
18	instead of if, yes, no, or I don't know?		18	blue? What happened?	
19	THE WITNESS: Your Honor, I don't know. It could make		19	A. I called Gurinder, the senior analyst at Bear Stearns. It	
20	sense if it said if as well.		20	was his reports. He was the head name on the report.	
21	Q. In any event, he was referring to a surprise from the		21	Q. How did you get to Mr. Kuo?	
22	conversation, correct?		22	A. I believe Gurinder passed me to Mr. Kuo at some point.	
23	A. I don't know. This is not my words. I don't know.		23	Q. Do you remember your first conversation with Mr. Kuo?	
24	Q. All I can ask you is if you have an understanding, having		24	A. No.	
25	received it, of what he meant. My question is, did you		25	Q. Do you remember when it was that he told you that he had a	

<p>CBKMNEW2 Tortora - cross Page 1069</p> <p>1 contact at Altera?</p> <p>2 A. I remember that in the initial conversation. One of the</p> <p>3 initial conversations, I should say, very early on he told me</p> <p>4 that. I don't remember if it was the first conversation,</p> <p>5 second conversation.</p> <p>6 Q. When he told you, it was early in your knowing him?</p> <p>7 A. I'm sorry?</p> <p>8 Q. It was early in the period in which you knew it. It was</p> <p>9 right after you had first met him?</p> <p>10 A. Yeah. It would have been some time in 2007.</p> <p>11 Q. And at the time he told you he had this contact you had</p> <p>12 never met him in person, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. You had just spoken to him on the phone?</p> <p>15 A. That's correct.</p> <p>16 Q. You didn't know him previously and he didn't know you</p> <p>17 previously, right?</p> <p>18 A. Yes.</p> <p>19 Q. Was he hesitant in any way to tell you that he had this</p> <p>20 contact?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you remember having to push him on it?</p> <p>23 A. I don't recall.</p> <p>24 Q. Or make any promises to him before he told you he had a</p> <p>25 contact?</p>	<p>CBKMNEW2 Tortora - cross Page 1071</p> <p>1 Q. As you know from being a sell side analyst yourself, sell</p> <p>2 side analysts talk to people at companies and then they issue</p> <p>3 research reports based on that and other information they</p> <p>4 gather, right?</p> <p>5 A. That's one of the responsibilities, yes.</p> <p>6 Q. Didn't you observe that he put in his research reports</p> <p>7 information that he got through these checks?</p> <p>8 A. As I mentioned, Mr. Fishbein, that's one of the ways I</p> <p>9 first discovered that they were extremely accurate, because I</p> <p>10 had analyzed historical research reports.</p> <p>11 Q. Let's look at Government Exhibit 1358, your tab 278.</p> <p>12 Is this an e-mail from you to Mr. Newman about Altera</p> <p>13 and Xilinx?</p> <p>14 A. Yes.</p> <p>15 Q. And I think you testified on direct about this particular</p> <p>16 quarter, which was the fourth quarter of 2007 reported at the</p> <p>17 end of January 2008, right?</p> <p>18 A. Yes.</p> <p>19 MR. FISHBEIN: Defense offers Government Exhibit 1358.</p> <p>20 MS. APPS: No objection.</p> <p>21 THE COURT: Government Exhibit 1358 is received.</p> <p>22 (Government's Exhibit 1358 received in evidence)</p> <p>23 Q. I believe you identified this as an example of the</p> <p>24 information you received from Mr. Kuo, right?</p> <p>25 A. Did we see this exhibit before?</p>
<p>CBKMNEW2 Tortora - cross Page 1070</p> <p>1 A. I certainly didn't make any promises to him.</p> <p>2 Q. He volunteered it, right?</p> <p>3 A. Again, I don't recall.</p> <p>4 Q. With respect to this contact did you ever know a name?</p> <p>5 A. No.</p> <p>6 Q. Did you ever know a position that this contact had at</p> <p>7 Altera?</p> <p>8 A. No.</p> <p>9 Q. Did you know anything about the level of authorization the</p> <p>10 contact had to provide information?</p> <p>11 A. No.</p> <p>12 Q. And you didn't ever hear anything about any benefit being</p> <p>13 provided to this contact, did you?</p> <p>14 A. No.</p> <p>15 Q. Isn't it a fact, Mr. Tortora, that the information that</p> <p>16 Mr. Kuo gave you about Altera had already been published in</p> <p>17 Mr. Kuo's research reports at Bear Stearns?</p> <p>18 A. It would depend on which instance you are talking about.</p> <p>19 Q. Mr. Kuo is an analyst, right? I'm sorry. A sell side</p> <p>20 analyst, right?</p> <p>21 A. Yes.</p> <p>22 Q. At this time?</p> <p>23 A. Yes.</p> <p>24 Q. And his job was to issue research reports, right?</p> <p>25 A. One of them, yeah.</p>	<p>CBKMNEW2 Tortora - cross Page 1072</p> <p>1 Q. I take that back.</p> <p>2 If you look at the second paragraph, you write to</p> <p>3 Mr. Newman: Spoke to Bear contact.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And the Bear contact was Mr. Kuo, right?</p> <p>7 A. Yes.</p> <p>8 Q. So is this an example of information you got from Mr. Kuo</p> <p>9 with respect to the quarter that you testified about?</p> <p>10 A. Just to be clear, I think, again, from my interpretation of</p> <p>11 what's going on here, I believe that -- it's difficult without</p> <p>12 the dates, which we should have for every company that we talk</p> <p>13 about, but it appears, based on this note, that Xilinx is</p> <p>14 reporting on this day.</p> <p>15 Q. That's right. That was going to be my next question.</p> <p>16 Xilinx already reported.</p> <p>17 A. So it appears that the comment you just pointed out, the</p> <p>18 first line of the second paragraph, is that he's making</p> <p>19 comments on the already public comments of Xilinx in this</p> <p>20 particular case.</p> <p>21 Q. My question is just Bear contact. Is that Mr. Kuo?</p> <p>22 A. Yes.</p> <p>23 Q. Then in the next paragraph re, ALTR?</p> <p>24 A. Yes.</p> <p>25 Q. That's Altera?</p>

CBKMNEW2	Tortora - cross	Page 1073	CBKMNEW2	Tortora - cross	Page 1075
1 A. Yes.			1 A. Yes.		
2 Q. It says he expects.			2 Q. So he's indicating to the reader that he's done checks to		
3 Do you see that?			3 get this information, right?		
4 A. Yes.			4 A. Whatever the word checks means, yes.		
5 Q. Do you understand that to be Mr. Kuo expects?			5 Q. How did you understand it?		
6 A. Yes.			6 A. Well, I understood it, because I spoke to Danny, that he		
7 Q. Is this an example of information you got from Mr. Kuo that			7 would talk to contacts from Altera and/or Xilinx.		
8 you thought came from his contact?			8 Q. Actually, that's a common understanding of checks, is that		
9 A. Yes.			9 you talked to people in the industry, including people at the		
10 Q. And there are two things that he says he's expecting with			10 company, right?		
11 respect to Altera.			11 A. Again, it depends on the author and depends on the		
12 Do you see that?			12 interpretation, because it could mean people at the company,		
13 A. Yes.			13 could mean people at competitors, suppliers, et cetera.		
14 Q. One is, if you look towards the end of the sentence it			14 Q. Will you agree with me, Mr. Tortora, that both pieces of		
15 says: Q4 beat looks to be bigger than Xilinx, according to his			15 information contained in your e-mail to Mr. Newman on January		
16 checks.			16 18 were included in this research report dated January 15?		
17 Do you see that?			17 A. Let me read through it.		
18 A. Yes.			18 Q. I can direct your attention. It's the first bullet point		
19 Q. Did you understand that to mean that for the fourth quarter			19 and the third bullet point and you can walk you through it, but		
20 ended end of December, Mr. Kuo was saying that Altera was going			20 why don't you read it to yourself first.		
21 to beat their guidance more than Xilinx had beat theirs?			21 A. Sure.		
22 A. Yes.			22 You might need to point me to this because I'm not --		
23 Q. The second piece of information he gave you was that Altera			23 Q. I'm happy to. Let's start with the 18th, the e-mail from		
24 is going to guide higher for Q1, which is the upcoming quarter,			24 you to Mr. Newman.		
25 the next quarter?			25 A. Okay.		
CBKMNEW2	Tortora - cross	Page 1074	CBKMNEW2	Tortora - cross	Page 1076
1 A. Yes.			1 Q. And the first piece of information you talked about was		
2 Q. Now, if you'll look with me at Defense Exhibit 8185, is			2 that for Q4, which is the quarter ending December, right?		
3 your tab 279, do you recognize that as a Bear Stearns research			3 A. Yes.		
4 report issued by or authorized by Mr. Kuo and his boss?			4 Q. Altera's beat looks to be bigger than Xilinx, right?		
5 A. I'm sorry. Can you repeat that.			5 A. Yes.		
6 Q. Yeah. Do you recognize Defense Exhibit 8185 as a Bear			6 Q. Now, if you look at the first bullet of the Bear Stearns		
7 Stearns research report authored by Mr. Kuo and his boss?			7 report, it says: We expect Altera to report QCY fourth quarter		
8 A. Yes.			8 of '07 revenues. It gives numbers, right?		
9 Q. And it relates to Altera and Xilinx, the same two companies			9 And then it says: Above the company's guidance,		
10 we are talking about, right?			10 right? Do you see that, above the company's guidance?		
11 A. Yes.			11 A. Yes.		
12 MR. FISHBEIN: Now, defense offers Exhibit 8185.			12 Q. So he's expecting Altera to report revenue above guidance,		
13 MS. APPS: No objection.			13 right?		
14 THE COURT: Defense 8185 is received.			14 A. Yes.		
15 (Defendant's Exhibit 8185 received in evidence)			15 Q. And then with respect to Xilinx it says they are going to		
16 Q. Now, your note, Mr. Tortora, to Mr. Newman was dated			16 report in the upper end of their guidance, right?		
17 Friday, January 18, right?			17 A. Yes.		
18 A. Yes.			18 Q. And reporting above guidance is better than reporting at		
19 Q. And if you look at the Bear Stearns research report, that			19 the upper end of guidance, right?		
20 is dated January 15, right?			20 A. Generally speaking, yes.		
21 A. Yes.			21 Q. So that's the first piece. Then the second piece he says,		
22 Q. So it's several days before, right?			22 Altera, he expects, a higher Q1 guide based on his checks,		
23 A. Yes.			23 right? If you go to the Bear Stearns report, the third bullet,		
24 Q. Now Mr. Kuo writes in the report, the first words are, our			24 it says, quote: We expect Altera and Xilinx to guide for		
25 checks indicate, right?			25 revenues to increase low to mid single digit.		

<p>CBKMNEW2 Tortora - cross Page 1077</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Then it says: We expect Altera to guide to a slightly</p> <p>4 higher mid point than Xilinx.</p> <p>5 You see that?</p> <p>6 A. Yes. It makes sense.</p> <p>7 Q. Would you agree with me that the information in your e-mail</p> <p>8 to Mr. Newman on January 18 is reflected in the Bear Stearns</p> <p>9 report issued three days earlier?</p> <p>10 A. Yes.</p> <p>11 Q. If we could now go to Intel. And with respect to Intel you</p> <p>12 said you got information from Lacey Higgins, right?</p> <p>13 A. Yes.</p> <p>14 Q. And she also was a sell side analyst, right?</p> <p>15 A. Yes.</p> <p>16 Q. And she issued research reports in conjunction with her</p> <p>17 colleagues, right?</p> <p>18 A. Yes.</p> <p>19 Q. And you understood that the information that she was giving</p> <p>20 you she was also putting in research reports, right?</p> <p>21 A. As with Danny Kuo, at times some of the information would</p> <p>22 have been in the research reports. Lacey Higgins, at times,</p> <p>23 some of the information would have been in the research</p> <p>24 reports.</p> <p>25 Q. Let's look at Government Exhibit 1176.</p>	<p>CBKMNEW2 Tortora - cross Page 1079</p> <p>1 from a neutral to a buy.</p> <p>2 Q. Are upgrades something that are published?</p> <p>3 A. Yes.</p> <p>4 Q. They are published as part of the research reports, right?</p> <p>5 A. Yes.</p> <p>6 Q. And distributed to the finance community, right?</p> <p>7 A. Yes.</p> <p>8 Q. What she was telling you is, here is some information, but</p> <p>9 we have already done an upgrade, right?</p> <p>10 A. Yes.</p> <p>11 Q. So she was pointing out that the information she is giving</p> <p>12 you is already in a report, right?</p> <p>13 A. Well, I'm not denying that some of the information is in</p> <p>14 this report. That's not necessarily what's being said here. I</p> <p>15 think there is two separate thoughts.</p> <p>16 Q. Let's look at the information here. It says: ASP holding</p> <p>17 in mix looking good.</p> <p>18 What is that referring to?</p> <p>19 A. That ASP's selling prices are stable and the product mix is</p> <p>20 positive.</p> <p>21 Q. And then there is a comment, by the way, it's the third to</p> <p>22 last bullet point. It says: Paul getting bullish, Maloney</p> <p>23 still cautious.</p> <p>24 What does that refer to?</p> <p>25 A. Paul Otellini was Intel's CEO and I believe Sean Maloney</p>
<p>CBKMNEW2 Tortora - cross Page 1078</p> <p>1 A. Which is the tab?</p> <p>2 Q. I'm sorry. It's tab 292.</p> <p>3 Is that an e-mail from you to Mr. Newman regarding</p> <p>4 Intel, May 4, 2009?</p> <p>5 A. Yes.</p> <p>6 MR. FISHBEIN: Defense offers Government Exhibit 1176.</p> <p>7 MS. APPS: No objection.</p> <p>8 THE COURT: Go Exhibit 1176 is received.</p> <p>9 (Government's Exhibit 1176 received in evidence)</p> <p>10 Q. You say here, Mr. Tortora, that you had a call with Lacey,</p> <p>11 MS checks late Friday, et cetera.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Is this an example of information that you got from</p> <p>15 Ms. Higgins about Intel?</p> <p>16 A. Yes.</p> <p>17 Q. And do you see that it says: Call with Lacey, MS checks,</p> <p>18 late Friday, made them pull trigger on UG over weekend.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. What is UG?</p> <p>22 A. Upgrade.</p> <p>23 Q. What is an upgrade?</p> <p>24 A. An upgrade is where they are increasing their</p> <p>25 recommendation on Intel from either a sell to a neutral or a</p>	<p>CBKMNEW2 Tortora - cross Page 1080</p> <p>1 was the head of sales.</p> <p>2 Q. I take it they are saying different things, that there is</p> <p>3 some contrary information here?</p> <p>4 A. Yeah. They have differing opinions on the economy.</p> <p>5 Q. But the overall takeaway at the end, it says, but getting</p> <p>6 more positive?</p> <p>7 A. Yes.</p> <p>8 Q. Is that something she said or is that your interpretation?</p> <p>9 A. My interpretation of what I wrote here was that it was</p> <p>10 something that she said.</p> <p>11 Q. And now let's look at Defense Exhibit 8424. It's your tab</p> <p>12 293.</p> <p>13 Do you recognize that as a Morgan Stanley research</p> <p>14 report about Intel?</p> <p>15 A. Yes.</p> <p>16 Q. Authored by Ms. Higgins and her colleagues, right?</p> <p>17 A. Yes.</p> <p>18 Q. Dated May 4, 2009, the same date as the e-mail?</p> <p>19 A. Yes.</p> <p>20 MR. FISHBEIN: Defense offers Defense Exhibit 8424.</p> <p>21 MS. APPS: No objection.</p> <p>22 THE COURT: Defense Exhibits 8424 is received.</p> <p>23 (Defendant's Exhibit 8424 received in evidence)</p> <p>24 Q. If you will look, Mr. Tortora, under what's new.</p> <p>25 Do you see that?</p>

<p>CBKMNEW2 Tortora - cross Page 1081</p> <p>1 A. Yes.</p> <p>2 Q. It's on the left-hand column in the middle. Do you see it</p> <p>3 says, quote: Near term, our checks, right?</p> <p>4 You see the word checks?</p> <p>5 A. Yes.</p> <p>6 Q. You understood she was indicating that they had done some</p> <p>7 checks?</p> <p>8 A. Yes.</p> <p>9 Q. Indicate positive business trends in the PC supply chain.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And she comments that there is upside to consensus, 2Q09</p> <p>13 estimates.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you understand her to mean that based on the checks,</p> <p>17 they think Intel will do better than the consensus estimates at</p> <p>18 the time?</p> <p>19 A. Yes.</p> <p>20 Q. Would you agree that this is information similar to what</p> <p>21 was conveyed in your conversation with Ms. Higgins on the same</p> <p>22 date?</p> <p>23 A. Based on that one line, it's certainly in the same</p> <p>24 direction. Obviously, the information was much more specific</p> <p>25 that Lacey provided in the e-mail we just reviewed. Again,</p>	<p>CBKMNEW2 Tortora - cross Page 1083</p> <p>1 Q. Mr. Tortora, we can move on.</p> <p>2 As I understand it, when you first took the job at</p> <p>3 Diamondback, you worked out of the office in Connecticut, is</p> <p>4 that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And did you commute up there every day?</p> <p>7 A. I believe it was four days a week.</p> <p>8 Q. That is the same office building that Mr. Newman worked in,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Were you in the same office?</p> <p>12 A. Yes.</p> <p>13 Q. In other words, the same physical location?</p> <p>14 A. Same floor.</p> <p>15 Q. Same floor. But what was the setup like? In other words,</p> <p>16 did you each have an office or is there a trading floor? How</p> <p>17 does it work?</p> <p>18 A. He worked on the trading floor and I shared an office.</p> <p>19 Q. Who did you share an office with?</p> <p>20 A. I believe the office mate changed over time.</p> <p>21 Q. But you were not sitting next to Mr. Newman, correct?</p> <p>22 A. No.</p> <p>23 Q. And at a certain point you started spending more time in</p> <p>24 New York, is that right?</p> <p>25 A. Yes.</p>
<p>CBKMNEW2 Tortora - cross Page 1082</p> <p>1 just based on this one line that you pointed out.</p> <p>2 Q. Well, I'll ask you, Mr. Tortora, in the research report</p> <p>3 there is a comment, quote: Our analysis indicates that Intel's</p> <p>4 margins and revenues have suffered from a severe decline</p> <p>5 shipment, et cetera.</p> <p>6 Did Ms. Higgins say anything to you in her e-mail</p> <p>7 about margins?</p> <p>8 A. Sorry, Mr. Fishbein. Are you reading a partial sentence or</p> <p>9 can you direct me?</p> <p>10 Q. Really, the question is, in the research report, where she</p> <p>11 says, our checks indicates positive business trends, there is</p> <p>12 some commentary about Intel's margins, is that correct?</p> <p>13 A. The line that's highlighted on the screen here, is that</p> <p>14 what you are asking?</p> <p>15 Q. And after that, because it also says we think that server</p> <p>16 MPU revenues will reaccelerate by early 2010, which should</p> <p>17 translate to upside to gross margins and EPS.</p> <p>18 Do you see that?</p> <p>19 A. Okay.</p> <p>20 Q. You see that the research report there is commentary about</p> <p>21 margins and EPS?</p> <p>22 A. Yes.</p> <p>23 Q. And in your write-up of your call with Lacey, is there</p> <p>24 anything about margins or EPS?</p> <p>25 A. No.</p>	<p>CBKMNEW2 Tortora - cross Page 1084</p> <p>1 Q. When was that?</p> <p>2 A. I believe the transition occurred about six to nine months</p> <p>3 after I started working for Diamondback, so some time in 2008.</p> <p>4 Q. Then starting at that point, when you were in New York and</p> <p>5 he was in Connecticut, is it fair to say that you communicated</p> <p>6 by telephone and e-mail and IM?</p> <p>7 A. For the most part, except when I would see him in person.</p> <p>8 Q. When would that be?</p> <p>9 A. At conferences.</p> <p>10 Q. How many conferences would you say that you attended per</p> <p>11 year?</p> <p>12 A. Well, if you include all events -- all events or just phone</p> <p>13 conferences?</p> <p>14 Q. You mentioned you might see Mr. Newman at conferences?</p> <p>15 A. The type of events I would see Mr. Newman at? Is that what</p> <p>16 you are asking?</p> <p>17 Q. Yes.</p> <p>18 A. Two to three per quarter.</p> <p>19 Q. Part of your job was to attend those conferences, right?</p> <p>20 A. Yes.</p> <p>21 Q. Wasn't part of the idea was you would attend them and give</p> <p>22 him reports?</p> <p>23 A. Yes. If he wasn't attending them, yes.</p> <p>24 Q. In fact, he didn't attend many of them, right?</p> <p>25 A. Yes.</p>

CBKMNEW2	Tortora - cross	Page 1085	CBKMNEW2	Tortora - cross	Page 1087
1	Q. So a lot of your communication was by e-mail, correct?		1	by Diamondback Capital Management's company e-mail system and	
2	A. E-mail and IM and, to a lesser extent, on the phone. I'm		2	it is subject to archival and possible review by someone other	
3	sorry. As a whole. Sandy Goyal, most of the information was		3	than the recipient.	
4	on the phone.		4	Do you see that?	
5	Q. You had both a working e-mail and personal e-mail, correct?		5	A. Yes.	
6	A. Yes.		6	Q. Just looking at that, does that refresh your memory that	
7	Q. And your personal e-mail is your Gmail account, is that		7	early on you were aware that company e-mails were not private	
8	correct?		8	between the two people that sent them?	
9	A. That's right.		9	A. Mr. Fishbein, if you are asking me if I'm aware of Sarbanes	
10	Q. Mr. Newman never gave you a personal account for himself,		10	Oxley and the archival of e-mails, I am. I've been aware of	
11	is that correct?		11	that for years. That's different than somebody reviewing	
12	A. I am not sure.		12	e-mails that are sent on a real time basis.	
13	Q. Do you recall ever sending an e-mail to Mr. Newman's		13	Q. There is two thoughts there. One is they are archived,	
14	personal account?		14	right?	
15	A. I don't recall one way or another.		15	A. Yes.	
16	Q. Have you seen any e-mails in this case that had a personal		16	Q. Which means that they are saved and you can't delete them,	
17	account for --		17	right?	
18	A. I don't believe so.		18	A. Sure.	
19	Q. Now, you understood from the beginning of your employment		19	Q. And another thought is that they can possibly be reviewed	
20	at Diamondback that e-mails sent on the Diamondback e-mail		20	by somebody other than the recipient?	
21	system were subject to review by the Diamondback compliance		21	A. Of course. If something is archived for a matter of years,	
22	department, is that right?		22	that's implied.	
23	A. No. I don't recall.		23	Q. I take it on the archiving, on the fact that your e-mails	
24	Q. Do you ever recall learning that e-mails on the official		24	on the official system would be saved, that you knew about?	
25	system were subject to review by people other than the		25	A. Yes.	
CBKMNEW2	Tortora - cross	Page 1086	CBKMNEW2	Tortora - cross	Page 1088
1	recipient?		1	Q. You understood that once you send it on the official	
2	A. What do you mean, learning? Like as a standard practice?		2	system, it's saved and you can't delete it, right?	
3	Q. However you could learn something. Somebody told you,		3	A. That's correct.	
4	standard practice, it's in the e-mail footer.		4	Q. If you want to take it back or delete something, that's a	
5	A. There was one point when Todd mentioned something about it		5	problem, you can't do it, right?	
6	years later.		6	A. Sure.	
7	Q. At the beginning, did you come to understand that e-mails		7	Q. Did you understand from Sarbanes Oxley that regulators	
8	on the official system were not confidential, just between the		8	might have access to those archived e-mails?	
9	people that sent them?		9	A. Sure. But let me be clear. Prudential, when I was at	
10	A. Again, I don't remember learning that.		10	Prudential, there was actually a real time live process of	
11	Q. Do you ever recall hearing anything about that the		11	compliance officers reviewing e-mails and there were times when	
12	compliance department did periodic reviews of people's e-mails?		12	they would actually real time look for key words and approach	
13	A. Again, I don't recall that.		13	somebody there. That's a big difference than something being	
14	Q. Let's look at Government Exhibit 100, which is an exhibit		14	archived due to legislation.	
15	already in the case. You have it in your loose documents.		15	Q. So you don't have a recollection of Diamondback compliance	
16	This is August 3, 2007, so right before you actually		16	doing these periodic reviews. Is that what you are saying?	
17	started at Diamondback, is that correct?		17	A. That's correct. Until Todd mentioned something years later	
18	A. Yes.		18	in one particular instance.	
19	Q. And if you just look at the footer of the e-mail that on		19	Q. But you do recall that you knew that archived e-mails were	
20	the second page where Mr. Newman sends you an e-mail from		20	saved, right?	
21	tnewman@diamondbackcap.com.		21	A. Yes.	
22	You see that?		22	Q. And were potentially subject to review by regulators?	
23	A. Yes.		23	A. Sure.	
24	Q. The footer, if you look towards the bottom it says: All		24	Q. Like the SEC?	
25	e-mails sent to or received from this address will be received		25	A. Yes.	

<p>CBKMNEW2 Tortora - cross Page 1089</p> <p>1 Q. Now, you used your own personal e-mail account, the Gmail 2 account, for some of the e-mails while you were working at 3 Diamondback, right? 4 A. Yes. 5 Q. For example, we saw that the e-mail exchange between you 6 and Sandy Goyal about the Dell model, right, that was on your 7 Gmail account? 8 A. Sandy sent that to my Gmail, yes. 9 Q. There were other occasions where you sent e-mails on your 10 Gmail relating to some of the stocks at issue here, right? 11 A. Yes. 12 Q. For example, when you e-mailed your stepfather, Marshall 13 Ingel, about Dell, it was on your Gmail, right? 14 A. That's correct, although that's conversations with families 15 or friends. That's not Diamondback-related issues. 16 Q. You felt that was private, right? 17 A. Yes. 18 Q. And you didn't want the rest of Diamondback to know about 19 it necessarily, right? 20 A. Well, I wouldn't even go that far. Do you e-mail your wife 21 on your business account? That's just -- 22 Q. I get to ask the questions. 23 A. But my point is, my point is, I don't e-mail my girlfriend 24 on my Diamondback account. 25 Q. In other words, if you have something private that you</p>	<p>CBKMNEW2 Tortora - cross Page 1091</p> <p>1 A. No. 2 Q. But you agree that you would apologize to him when you used 3 your Gmail instead of the official system? 4 A. Not only did Mr. Newman not tell me to use the official 5 system -- 6 Q. This is a different question. I said, do you agree that 7 you apologized to Mr. Newman when you used your Gmail account 8 instead of the official system? 9 A. Mr. Fishbein, I don't recall, but I would have notified him 10 at times that I was using that. 11 Q. And my question is, did you apologize? Did you say sorry? 12 MS. APPS: Asked and answered, your Honor. 13 THE COURT: You should answer the question. The 14 question is: Do you agree that you apologized to Mr. Newman 15 when you used your Gmail account instead of the official? 16 THE WITNESS: Your Honor, I don't have a recollection 17 of that. 18 Q. We can look at Government Exhibit 280, your tab 59. 19 A. I'm sorry, Mr. Fishbein. Can you speak in the mic. 20 Q. Government Exhibit 280, your tab 59. 21 Do you recognize that as an e-mail from you to 22 Mr. Newman on February 27, 2009? 23 A. Yes. 24 MR. FISHBEIN: I believe this is in evidence already. 25 Q. And this is this situation you talked about, right, where</p>
<p>CBKMNEW2 Tortora - cross Page 1090</p> <p>1 don't want others than a recipient to see, you use your Gmail? 2 A. The way you implied is something is secretive and something 3 is hidden, so I don't want to answer the question in the 4 affirmative. If my private life I communicate on certain means 5 and in my work life I communicate with certain means. 6 Q. Were the e-mails with Sandy Goyal about the Dell model, was 7 that relating to your private life? 8 A. I answered your question yesterday that I had no 9 recollection of why Mr. Goyal e-mailed those on my Gmail 10 account. 11 I can also say that the most common reason I use my 12 Gmail account for Diamondback purposes is because the inbox 13 would fill up and they wouldn't allow me to send or receive 14 e-mails and it would take me a long time to delete those. If I 15 was at conferences, I would say, sending from my Gmail, my 16 inbox is full, and I actually saw several documents in several 17 exhibits where I said that and that was the primary reason why 18 I did that. 19 Q. Actually, when that happened, and you used your Gmail, you 20 would apologize to Mr. Newman for using your Gmail, right? 21 A. There may have been times when I did. I just wanted to 22 notify him why I was using my Gmail. 23 Q. But the reason you apologized and said, sorry, I'm using my 24 Gmail is he actually instructed you to use the official system, 25 right?</p>	<p>CBKMNEW2 Tortora - cross Page 1092</p> <p>1 you couldn't get into the network? 2 A. Yes. 3 Q. So you were using your Gmail account, right? 4 A. Yes. 5 Q. And you said, sorry, right? 6 A. I did. 7 Q. Just so we are clear, just so the record is clear, you are 8 not aware, as you sit here now, of ever sending an e-mail to 9 any personal e-mail account of Mr. Newman, correct? 10 A. I don't recall. 11 Q. Are you aware now of doing that? 12 A. What do you mean, am I aware now? 13 Q. As you sit here right now, do you have a recollection in 14 your mind of having sent an e-mail to Mr. Newman's personal -- 15 A. Mr. Fishbein, I said I don't recall. That means I have no 16 recollection. 17 Q. Do you have any recollection of ever having received an 18 e-mail from Mr. Newman from a personal e-mail account? 19 A. No, I do not. 20 Q. And just also so I'm clear, your knowledge that e-mails on 21 the official system were archived and potentially subject to 22 review by regulators, that dates back to when you started at 23 Diamondback, right? 24 A. Yes. 25 Q. If you could turn to Defense Exhibit 6017. It's tab 6 in</p>

<p>CBKMNEW2 Tortora - cross Page 1093</p> <p>1 your binder.</p> <p>2 What is this?</p> <p>3 A. An e-mail from myself to Todd Newman on April 16, 2008.</p> <p>4 Q. And it refers to JAVA checks, is that right?</p> <p>5 A. Yes.</p> <p>6 MR. FISHBEIN: Defense offers Exhibit 6017.</p> <p>7 MS. APPS: No objection.</p> <p>8 THE COURT: Defense Exhibit 6017 is received.</p> <p>9 (Defendant's Exhibit 6017 received in evidence)</p> <p>10 Q. What does JAVA checks mean, Mr. Tortora?</p> <p>11 A. JAVA is a company -- is a ticker symbol for the company Sun</p> <p>12 Microsystems.</p> <p>13 Q. So you are conveying information to Mr. Newman about Sun?</p> <p>14 A. Yes.</p> <p>15 Q. Do you remember what the checks were that you did?</p> <p>16 MS. APPS: You mean on this particular document?</p> <p>17 MR. FISHBEIN: Yes.</p> <p>18 A. No, I do not remember in this particular document.</p> <p>19 Q. Would it be fair to say that what you were conveying here</p> <p>20 to Mr. Newman is that you had made some inquiries and you had</p> <p>21 developed this various information here about Sun?</p> <p>22 A. Yes.</p> <p>23 Q. Now, if you could turn to Government Exhibit 1218, that's</p> <p>24 your tab 5. Is that an e-mail exchange on the same date, April</p> <p>25 16, 2008, between you and Mr. Horvath, also about Sun?</p>	<p>CBKMNEW2 Tortora - cross Page 1095</p> <p>1 A. I was not asked.</p> <p>2 Q. You are just throwing that in now, right?</p> <p>3 A. You are asking me questions. I'm trying to answer.</p> <p>4 MS. APPS: Objection.</p> <p>5 Q. You don't like Mr. Newman, do you? Can you answer? Do you</p> <p>6 like Mr. Newman?</p> <p>7 A. I do not like Mr. Newman.</p> <p>8 Q. Now, if we look at this e-mail, April 16 from Mr. Horvath,</p> <p>9 do you understand that to be his summary of what he heard from</p> <p>10 his friend?</p> <p>11 A. It's unclear what he's being told and what he's</p> <p>12 summarizing.</p> <p>13 Q. But it's from Horvath and it includes information he's</p> <p>14 getting from his friend, right?</p> <p>15 A. Yes.</p> <p>16 Q. And there is a reference if you look in the middle, it</p> <p>17 says, but I talked to some guys in the finance department.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Did you understand that to be Sun's finance department?</p> <p>21 A. Yes.</p> <p>22 Q. Now, this e-mail you received at 4:34 p.m. on April 16,</p> <p>23 2008, right?</p> <p>24 A. Yes.</p> <p>25 Q. And then you sent the e-mail to Mr. Newman at 4:42 p.m. on</p>
<p>CBKMNEW2 Tortora - cross Page 1094</p> <p>1 A. Yes.</p> <p>2 MR. FISHBEIN: Defense offers Government Exhibit 1218.</p> <p>3 MS. APPS: No objection.</p> <p>4 THE COURT: Government's 1218 is received.</p> <p>5 (Government's Exhibit 1218 received in evidence)</p> <p>6 MR. FISHBEIN: If we could put up both documents side</p> <p>7 by side. That should be one of the ones that we see.</p> <p>8 Q. Mr. Tortora, feel free to take your time and look at both</p> <p>9 of them because I am going to sort of compare them.</p> <p>10 A. Sure.</p> <p>11 Yes.</p> <p>12 Q. Let's look for now at the one that's up on the screen which</p> <p>13 is Government Exhibit 1218.</p> <p>14 Mr. Horvath tells you: Caught up with him briefly</p> <p>15 today.</p> <p>16 Do you know what that refers to?</p> <p>17 A. So Jon Horvath had a friend who worked at Sun for a period</p> <p>18 of time. Then he left Sun. I don't recall exactly when he</p> <p>19 left Sun. But I do know that in 2007, and early 2008, he was</p> <p>20 there. He used to provide specific earnings-related</p> <p>21 information of which I passed to Todd and Todd traded on. Most</p> <p>22 of that conversation was via the phone. There were some on</p> <p>23 e-mails.</p> <p>24 Q. What you just testified about trading, you didn't say that</p> <p>25 on direct, did you?</p>	<p>CBKMNEW2 Tortora - cross Page 1096</p> <p>1 April 16, 2008, right?</p> <p>2 A. Yes.</p> <p>3 Q. So that's eight minutes later, right?</p> <p>4 A. Yes.</p> <p>5 Q. And in that eight minutes what you did is you took the</p> <p>6 e-mail from Horvath, you jumbled around the sentences and you</p> <p>7 resent it, right?</p> <p>8 A. Jumbled around the sentences?</p> <p>9 Q. I'll walk you through it. Look at Government Exhibit 1218.</p> <p>10 That's the one from Horvath, right?</p> <p>11 A. Yes.</p> <p>12 Q. Let's start the at bottom. You see it says hardware was</p> <p>13 soft all around?</p> <p>14 A. Yes.</p> <p>15 Q. And in your e-mail to Newman you start off, HW was soft all</p> <p>16 around, right?</p> <p>17 A. Okay.</p> <p>18 Q. Then in the first sentence of Horvath's it says, quote: We</p> <p>19 just missed at the high end, which would hurt margins, of</p> <p>20 course.</p> <p>21 Do you see that?</p> <p>22 A. Which e-mail?</p> <p>23 Q. The e-mail from Mr. Horvath.</p> <p>24 A. Okay.</p> <p>25 Q. We just missed at the high end, which would hurt margins,</p>

<p>CBKMNEW2 Tortora - cross Page 1097</p> <p>1 of course. 2 A. Yes. 3 Q. Then you wrote to Mr. Newman: Primary driver of revenue 4 missed. Was in high end servers, which implies negative for 5 GM. 6 You see that? 7 A. Yes. 8 Q. Then at the bottom of the Horvath e-mail it says: Close 9 rates for the deals that rolled over from 3Q into 4Q is not 10 very good so far. 11 Do you see that? 12 A. Yes. 13 Q. And then when you sent it to Mr. Newman, you put in closed 14 rates for the deals that slipped for March have not been good 15 so far into April. 16 Do you see that? 17 A. Yes. 18 Q. Then from Mr. Horvath's e-mail to you says: You were right 19 about what AVT says. That was us. 20 Do you see that? 21 A. Yes. 22 Q. And then you wrote to Mr. Newman: It was them that caused 23 the AVT miss. 24 Do you see that? 25 A. Yes.</p>	<p>CBKMNEW2 Tortora - cross Page 1099</p> <p>1 Q. And rather than simply forwarding an e-mail from 2 Mr. Horvath, right? 3 A. No. 4 Q. Let's go back. You said that you got gross margin 5 information on Dell from this company IPR -- strike that. 6 You said that Mr. Newman got gross margin information 7 on Dell from IPR in August of 2008, right? 8 A. Yes. 9 Q. And you said you can't recall who Mr. Newman's contact was 10 at IPR, right? 11 A. I don't know if I was told who he was. I am not sure. 12 Q. As you sit here now you can't tell us who that contact was, 13 right? 14 A. A name? 15 Q. Yes. 16 A. No. 17 Q. We saw an instant message, and you should look at 18 Government Exhibit 243B, already in evidence. 19 A. Tab, please? 20 Q. It's the loose documents in front of you. 21 A. One more time, the exhibit number. 22 Q. 243B. 23 A. It's just one page? 24 Q. Yup. 25 A. I got it.</p>
<p>CBKMNEW2 Tortora - cross Page 1098</p> <p>1 Q. Is it fair to say you repackaged what Mr. Horvath gave you 2 and you repackaged it to Mr. Newman, right? 3 A. Yes. I tried to articulate it a little better than the way 4 Mr. Horvath wrote it. 5 Q. You spent those eight minutes rearranging what Horvath said 6 and sent it on to Newman, right? 7 A. You can't possibly -- I can't possibly recall what I spent 8 the eight minutes doing, but I tried to rearrange those words 9 to become more clear, concise, articulate. 10 Q. In making it more clear there was one piece of information 11 you left out, wasn't there? 12 A. One piece of information -- 13 Q. Look at the Horvath e-mail and see if you can find a piece 14 of information that you did not convey to Mr. Newman. 15 A. I don't see the words, caught up with him briefly today. 16 Q. How about, but I talked to some guys in the finance 17 department. That's in the Horvath e-mail, right? 18 A. Yes. And as I've testified, I got explicit instructions 19 from Mr. Newman not to put the details around the people's 20 positions because he knows who they are coming from. 21 Q. And you did not include that in the e-mail to Mr. Newman? 22 A. Per his instruction, yes. 23 Q. You saw it in your interest to make this seem like work you 24 did, right? 25 A. No.</p>	<p>CBKMNEW2 Tortora - cross Page 1100</p> <p>1 Q. Do you remember this is the one where you are talking about 2 canceling IPR? 3 A. Todd is talking about canceling? 4 Q. Right. 5 A. Yes. 6 Q. We already went over it. And this is on September 18, 7 2008, correct? 8 A. Yes. 9 Q. And Mr. Newman says: Don't use much at all, so a waste, 10 right? 11 A. Yes. 12 Q. Then you refer to a guy Al who does storage who is no good. 13 Do you see that? 14 A. Yes. 15 Q. Was that a contact that you had at IPR? 16 A. I believe I told Ms. Apps in direct I did not recall who 17 this was. 18 Q. Is it Al Zielinski at IPR? 19 A. Again, I don't recall. 20 Q. Do you know whether IPR is a big firm or a small firm? 21 A. I could guess. 22 Q. Don't guess. Have you ever seen a brochure, a marketing 23 terms for IPR? 24 A. I don't recall. 25 Q. Why don't you look, just to refresh your memory -- don't</p>

CBKMNEW2	Tortora - cross	Page 1101	CBKMNEW2	Tortora - cross	Page 1103
1	say anything about it -- just look at Exhibit 10042 and see if		1	particular quarter.	
2	that refreshes your memory about IPR. It's one 10042 and		2	Q. Do you recall that you were on the mailing lists of some of	
3	10042A. Look at it first and then I'll ask you some questions.		3	these research firms?	
4	A. Okay.		4	A. Certainly I was on the mailing list of some research firms,	
5	Q. You can flip through it.		5	yes.	
6	A. Okay.		6	(Continued on next page)	
7	Q. Have you looked through it?		7		
8	A. Yes.		8		
9	Q. Does that refresh your memory who at IPR covered Dell?		9		
10	A. No.		10		
11	Q. Have you ever heard of somebody named Eric Nagel?		11		
12	A. I believe you asked me that the other day. That name		12		
13	doesn't ring a bell, outside of reading it now on this		13		
14	document.		14		
15	Q. It still doesn't ring a bell, is that right?		15		
16	A. Correct.		16		
17	Q. I am going to show you a document that's been labeled		17		
18	Defense Exhibit 894. That should also be in front of you.		18		
19	A. In one of the loose documents?		19		
20	Q. Yes.		20		
21	A. 894.		21		
22	Q. Defense 894.		22		
23	A. Got it.		23		
24	Q. You see that's an e-mail from Inflection Point Research?		24		
25	A. Yes.		25		
CBKMNEW2	Tortora - cross	Page 1102	CBKFNEW3	Tortora - cross	Page 1104
1	Q. And the parties have stipulated, Mr. Tortora, that this		1	Q. A lot of them or a few of them?	
2	e-mail was found in your e-mail box at Diamondback, okay?		2	A. A lot.	
3	A. Okay.		3	Q. And do you recall receiving quite a few of these type of	
4	MR. FISHBEIN: Defense offers Exhibit 894.		4	research -- excuse me, quite a few of these type of releases?	
5	THE COURT: No objection?		5	A. Type of releases?	
6	MS. APPS: No objection.		6	Q. Take that back. Do you recall being on the mailing list	
7	THE COURT: Defense 894 is received.		7	for Inflection Point Research?	
8	(Defendant's Exhibit 894 received in evidence)		8	A. I don't recall.	
9	Q. Mr. Tortora, we talked this about it a little bit. From		9	Q. Now, looking at this, this is a preview of Dell, right?	
10	time to time, you received these -- what were they referred to,		10	A. Yes.	
11	blast e-mails or marketing e-mails? How would you refer to an		11	Q. Typically when a research firm sends out a preview about a	
12	e-mail like this?		12	company, the person who sends it is the person at the company	
13	A. It looks like it's a Dell earnings preview.		13	covering the stock, right?	
14	Q. This is from Inflection Point Research, a research firm?		14	MS. APPS: Objection. Foundation.	
15	A. Yes.		15	THE COURT: Well, if you know. Is that your	
16	Q. Occasionally, or maybe more frequently, research firms		16	understanding?	
17	would widely distribute various reports, right?		17	A. Your Honor, it varies. You showed an example yesterday of	
18	MS. APPS: Objection, form.		18	Ashton Curtis from Morgan Stanley about Katy Huberty's upgrade.	
19	MR. FISHBEIN: I'll rephrase.		19	Ashton Curtis was certainly not the research analyst on that.	
20	THE COURT: Rephrase.		20	Q. Looking at this, does this refresh your recollection at all	
21	Q. What type of document is this?		21	as to Mr. Nagel's role in Inflection Point Research?	
22	A. Looks to be an e-mail for Dell earnings preview.		22	A. No, it does not.	
23	Q. What is an earnings preview that a research firm would send		23	Q. Or that he had any connection with Dell?	
24	out?		24	A. No, it does not.	
25	A. A note that forecasts what a company is going to do in a		25	Q. Do you recall receiving any information about Dell from	

CBKFNEW3	Tortora - cross	Page 1105	CBKFNEW3	Tortora - cross	Page 1107
1	Inflection Point Research from anyone other than Eric Nagel?		1	Q. That they ever had a one-on-one meeting, correct?	
2	A. I don't recall receiving it from Eric Nagel or anybody		2	A. Not that I'm aware of. No, I take that back. There were	
3	else.		3	several times which I was told that they were in the same --	
4	Q. And the date of this is November 14, 2008?		4	one or more --	
5	A. This e-mail yes.		5	Q. Hold on. I'm asking for your personal recollection.	
6	Q. That's after the IM exchange between you and Mr. Newman		6	THE COURT: Let him finish the answer. Go ahead.	
7	where you talk about canceling IPR, right?		7	A. You asked me a one-on-one meeting.	
8	A. Where he talked, yes. He asked me if I want to cancel.		8	Q. I think you said "I heard." Your Honor, before we get into	
9	He's saying he's thinking about canceling, yes.		9	hearsay --	
10	Q. So at least as of November 14, 2008, if Mr. Nagel is		10	A. Let me just point that out, then I'll take that back.	
11	sending this, Mr. Nagel is at IPR at that time, right?		11	There were times at which Todd was in a company meeting,	
12	A. That appears to be the case.		12	one-on-one small group meeting and one or more of the other	
13	Q. You said on direct that Mr. Newman had seen -- I wasn't		13	members of the group was as well.	
14	quite clear -- Mr. Horvath, Adonakis and Kuo, that they had met		14	Q. Okay, so I understand it, I just want to clarify that.	
15	or seen each other at some point? Did you say that?		15	When you say one-on-one, what you're referring to is a	
16	A. I don't recall my specific words, but at conferences		16	representative of a company, right?	
17	oftentimes I would see Todd and those individuals at the same		17	A. Yes.	
18	lunch table or same area.		18	Q. Who meets with analysts, right?	
19	Q. These are conferences attended by hundreds of people,		19	A. Yes.	
20	right?		20	Q. And this is something that would happen at conferences,	
21	A. Yes.		21	right?	
22	Q. And these would be attended by a lot of people in the		22	A. Yes.	
23	industry, right?		23	Q. In other words, the purpose of some of these conferences	
24	A. Yes.		24	was for companies to sort of tell their story to analysts,	
25	Q. Now, let's take Mr. Horvath. Have you ever been present		25	right?	
CBKFNEW3	Tortora - cross	Page 1106	CBKFNEW3	Tortora - cross	Page 1108
1	for an actual conversation between Mr. Newman and Mr. Horvath?		1	A. Yes.	
2	A. Yes.		2	Q. And in addition to the CEO or CFO giving a big speech they	
3	Q. When?		3	would offer what are called one-on-ones, right?	
4	A. They were -- I can remember one time in Scottsdale,		4	A. Yes.	
5	Arizona, one of the conferences, I believe it's CSFB. Again,		5	Q. And a one-on-one is you get somebody from the company,	
6	there was an outdoor lunch table and he was sitting down and		6	right?	
7	Todd was to my left and Horvath was to my right, and, you know,		7	A. Yes.	
8	my general conversation, really, Todd, you know John; John,		8	Q. And then analysts have an opportunity to meet with that	
9	Todd; yeah, yeah. Whatever pleasantries are exchanged.		9	person, just that person at the company, not a whole lot of	
10	Q. So you recall pleasantries?		10	other people, right?	
11	A. Yes.		11	A. Right.	
12	Q. Do you recall any substantive discussion about Dell?		12	Q. And what types of people from the companies would do these	
13	A. No.		13	one-on-ones?	
14	Q. Or any other stock?		14	A. CEO, CFO, investor relations.	
15	A. I don't recall.		15	Q. Did you ever get like representatives of geographic areas?	
16	Q. And what about Mr. Adonakis? Did you ever observe in		16	A. Yeah.	
17	actual conversation between Mr. Adonakis and Mr. Newman?		17	Q. And also product managers?	
18	A. Same type of conversation, yes.		18	A. Yep.	
19	Q. So basically you're saying they might have met each other		19	Q. And these are free-flowing conversations where they would	
20	at a conference and exchanged pleasantries?		20	tell you about the business, right?	
21	A. That was my observation, yes.		21	A. Free-flowing, I wouldn't use that word.	
22	Q. But you're not saying that they were friends, right?		22	Q. You get to ask questions, right?	
23	A. Correct.		23	A. Yes.	
24	Q. That they socialized together, right?		24	Q. And they answer them, right?	
25	A. Correct.		25	A. Yes.	

CBKFNEW3	Tortora - cross	Page 1109	CBKFNEW3	Tortora - cross	Page 1111
1	Q. And the subject would be the business of the company,		1	MS. APPS: If you could let him finish answering.	
2	right?		2	Q. The one example you remember, was that one of these	
3	A. At times.		3	one-on-ones at a conference?	
4	Q. Including the current business, right?		4	A. Yes.	
5	A. At times.		5	Q. Now, there's been some testimony that Mr. Newman had	
6	Q. So by one-on-one you weren't suggesting that Mr. Horvath		6	analysts other than you, correct?	
7	and Mr. Newman by themselves had a conversation?		7	A. Yes.	
8	A. Correct, outside of the pleasantries I described.		8	Q. There was James at one point, right?	
9	Q. So just to be clear, when you said one-on-one, you didn't		9	A. James Yang.	
10	mean a one-on-one conversation between Horvath and Newman?		10	Q. Is that right?	
11	A. Mr. Fishbein, you said one-on-one and I responded with that		11	A. Yes.	
12	answer.		12	Q. And there was Mr. Molloy for a short period of time, right?	
13	Q. Right, because people may not be familiar with this term		13	A. Yes.	
14	one-on-one as it refers to these conference meetings, okay, so		14	Q. Now, Mr. Newman came up with a number of trading ideas on	
15	I want to clarify the record.		15	his own without your input, is that correct?	
16	A. I understand.		16	A. Yes.	
17	Q. So you are not saying that you observed Mr. Newman and		17	Q. Do you know how many different stocks Mr. Newman actively	
18	Mr. Horvath speak to each other with just the two of them in		18	traded in his portfolio?	
19	the conversation?		19	A. A lot.	
20	A. Again, at lunch tables there would be dialogue between the		20	Q. Several hundred?	
21	two. I don't know, there was more dialogue than "Hi, hi."		21	A. I don't know the number, but dozens.	
22	Q. So you refer to that as pleasantries?		22	Q. Dozens? Do you think it was more like several hundred?	
23	A. And other conversations, although I'm not suggesting, I		23	A. I don't know if it was several hundred.	
24	don't recall any specific conversations about Dell or other		24	Q. How many did you cover?	
25	stocks.		25	A. What do you mean by cover?	
CBKFNEW3	Tortora - cross	Page 1110	CBKFNEW3	Tortora - cross	Page 1112
1	Q. All right. And same is true for Adonakis and Kuo, right?		1	Q. In other words, how many stocks were you responsible for	
2	When you said one-on-one, you were referring to these		2	actively following and doing research on?	
3	one-on-one meetings meaning one person from the company?		3	A. I don't think that it was explicitly defined what my	
4	A. Yes.		4	coverage was.	
5	Q. And how many analysts would attend a one-on-one?		5	Q. We talked a lot about Dell, right?	
6	A. It could be one to several.		6	A. Yes.	
7	Q. Several meaning how many?		7	Q. And we've seen lots of e-mails where you were giving	
8	A. Several could mean three, four, five, six, seven, eight, I		8	information and recommendations and thoughts about Dell, right?	
9	mean --		9	A. Yes.	
10	Q. The purpose of that, that is an official meeting at a		10	Q. So would it be fair to say that with respect to Dell, one	
11	conference, right?		11	of your responsibilities was to do research with respect to	
12	A. Yes.		12	Dell?	
13	Q. The purpose is to ask questions of the company person		13	A. Yes.	
14	right?		14	Q. And same with HP, right, you've seen that?	
15	A. Yes.		15	A. Yes.	
16	Q. So the analysts take turns asking questions of the company		16	Q. And some of the other stocks in this case, right?	
17	and the company answers, right?		17	A. Yes.	
18	A. Yeah, and sometimes there's general dialogue between the		18	Q. So what I'm asking you is how many stocks that Mr. Newman	
19	group as well.		19	traded were you responsible for doing research?	
20	Q. And, by the way, you said previously that there was one		20	A. Mr. Fishbein, I could come up with guesses and estimates,	
21	example where a company person gave you some specific		21	but then you appear not to like my guesses or estimates.	
22	information. You related one particular example.		22	Q. No, let's just ask --	
23	A. There was one specific example, yeah, there may have been		23	A. I could come up with another guess or estimate, but it's	
24	more, but there was one specific.		24	not a factual response. It's not a specific factual number.	
25	Q. What exact people, do you remember --		25	We can debate any number I say.	

CBKFNEW3	Tortora - cross	Page 1113	CBKFNEW3	Tortora - cross	Page 1115
1 Q. Let me ask it this way. When I asked you how many stocks			1 Q. Less look at Defense Exhibit 9226. It's your tab 7. Do		
2 he traded you said dozens, right?			2 you recognize that as an e-mail from you to Mr. Newman		
3 A. I said dozens.			3 December 31, 2009 relating to some research on different stock?		
4 Q. So I take it that the stocks you were involved in were			4 Including in the second paragraph down?		
5 somewhere dozens or less, right?			5 A. Yes, I see Dell mentioned here.		
6 A. Yes.			6 MR. FISHBEIN: Defense offers Defense Exhibit 9226.		
7 Q. Of the dozens of stocks he traded, how many, what			7 MS. APPS: No objection.		
8 percentage do you think you were involved in?			8 THE COURT: Defense 9226 is received.		
9 A. Is my answer acceptable?			9 (Defendant's Exhibit 9226 received in evidence)		
10 Q. Yeah.			10 Q. Now, December 31, 2009 you were in Australia, right?		
11 A. Okay. I'd say I had some involvement in 25 to 50 percent.			11 A. Can you ask that question again?		
12 Q. Okay. Of the dozens that you're aware of?			12 Q. Were you in Australia on vacation on December 31, 2009?		
13 A. Yes.			13 A. Yes.		
14 Q. You were just talking here about guessing. Could we put			14 Q. And you wanted to let Mr. Newman know that you were working		
15 Government Exhibit 214 on the screen? Just highlight that.			15 while you were on vacation, right?		
16 Mr. Tortora, when we were talking about this August 15 e-mail			16 A. Where do you see that?		
17 to Mr. Newman and we were talking about the EPS analysis there,			17 Q. Well, you said you were on vacation, right?		
18 in your prior testimony you used the word swag, that you might			18 A. Yes.		
19 have taken a swag. Do you remember that?			19 Q. And you wanted to update him on some work-related matters,		
20 A. I remember using that word, but I don't know if it was in			20 right?		
21 response to this.			21 A. I updated him on some work-related matters while I was in		
22 Q. All right. What does swag mean?			22 Australia. They're very different than what you just asked.		
23 A. A guess, prediction, quick calculation.			23 Q. Okay, while you were on vacation you updated Mr. Newman on		
24 Q. Actually, it's an acronym, isn't it?			24 work-related matters, right?		
25 A. I am not aware.			25 A. Yes.		
CBKFNEW3	Tortora - cross	Page 1114	CBKFNEW3	Tortora - cross	Page 1116
1 Q. Like FBI stands for Federal Bureau of Investigation?			1 Q. The first one, it says, "Henry King convo." Do you see		
2 A. I know what acronym means. I'm not aware that swag is an			2 that?		
3 acronym.			3 A. Yes.		
4 Q. Have you ever heard that swag stands for scientific wild			4 Q. "Short Henry King convo. Tracked him down on vacay in Hong		
5 ass guess?			5 Kong." Do you see that?		
6 THE COURT: Have you ever heard that?			6 A. Yes.		
7 A. No.			7 Q. Did you track down Mr. King in Hong Kong?		
8 Q. But you viewed it as a guess?			8 A. I don't recall. This appears to be something coming from		
9 A. Yes.			9 Sam possibly or John. The reason I say that is I never talked		
10 Q. I want to direct your attention now towards the end of the			10 to Henry King.		
11 year 2009, okay? And I think you said that your relationship			11 Q. But that's what you conveyed here, right, that you tracked		
12 with Mr. Newman had started to deteriorate, is that correct?			12 down Mr. King in Hong Kong, right?		
13 A. It deteriorated over time, yes.			13 A. That's not what I conveyed, no.		
14 Q. And your work became very sloppy, right?			14 Q. Well you said, quote, "Short Henry King convo. Tracked him		
15 A. What are you referring to?			15 down on vacay in Hong Kong," end quote. Do you see that?		
16 Q. Did you take short cuts in the research that you were			16 A. I see what is written here.		
17 doing?			17 Q. Okay, and then there's a summary of what Mr. King		
18 A. I don't recall what you're speaking about.			18 supposedly said, right?		
19 Q. You said something to the effect that you tried to do some			19 A. Yes.		
20 real research and real analysis, right?			20 Q. And are you saying that you did not intend to convey to Mr.		
21 A. There were specific times I remember in 2010 doing thorough			21 Newman that you were the one that had the conversation?		
22 detailed analysis and got little or no feedback from Todd.			22 A. Yeah. Exactly. This is not my, these aren't my words.		
23 Q. But there were times at the end of 2009 where you took some			23 These are cut and paste from the group.		
24 shortcuts and did some sloppy work, aren't there?			24 Q. Did you tell Mr. Newman that it was a cut and paste?		
25 A. Again, I don't know what you're referring to.			25 A. No, I didn't explicitly write in this e-mail that it was a		

CBKFNEW3	Tortora - cross	Page 1117	CBKFNEW3	Tortora - cross	Page 1119
1	cut and paste.		1	Q. And one of the ones you traded is Semiconductor Holders,	
2	Q. Let's look at the next one. It says, "Future electronics."		2	correct?	
3	Do you see that?		3	A. Yes.	
4	A. Yes.		4	Q. I believe you testified that that included -- well, let me	
5	Q. Quote, "Checked with in Future today because they told me		5	just ask you. What stocks were Semiconductor Holders?	
6	last check December," unquote. Do you see that?		6	A. It's a collection of semiconductor stocks, may have been	
7	A. Yes.		7	weighted by market cap, which means their relevant position	
8	Q. You told Mr. Newman that you were doing checks with Future,		8	from a stock value standpoint, clearly the largest	
9	right?		9	semiconductor companies, Intel would have made up the largest	
10	A. No, Mr. Fishbein. No, no, no.		10	portion. Second would have been Texas Instruments or Applied	
11	Q. So what you acknowledge is that what this really is you cut		11	Materials, on down the list. Again, I don't know the exact	
12	and paste e-mails that you got from others, right.		12	weightings, but that's my best estimation what it would be.	
13	A. Instead of forwarding from the group I'm doing one e-mail		13	Q. And I believe you testified on direct that information	
14	and cutting and pasting it and forwarding it.		14	regarding Intel and AMD and Texas Instruments could be relevant	
15	Q. But you didn't tell him --		15	in trading those ETFs, is that right?	
16	A. Excuse me, let me finish. I didn't tell him in this case		16	A. Yes.	
17	and when I was told this I didn't tell him either.		17	Q. And what did you mean by that?	
18	Q. Just so it's in the record let's look at Defense Exhibit		18	A. Well, let's say theoretically you knew every single	
19	9255. That's tab 8. That's the e-mail you got from		19	semiconductor company's business was going great, you could	
20	Mr. Horvath, right?		20	imply, you could imply that their stocks would go up and you	
21	MR. FISHBEIN: Defense offers Exhibit 9225.		21	could imply that the semiconductor index as a whole would go	
22	THE COURT: Any objection?		22	up.	
23	MS. APPS: No.		23	Q. So you see some correlation between the ETFs, the	
24	THE COURT: Defense 9225 received.		24	Semiconductor Holders and companies like Intel, Texas	
25	(Defendant's Exhibit 9225 received in evidence)		25	Instruments?	
CBKFNEW3	Tortora - cross	Page 1118	CBKFNEW3	Tortora - cross	Page 1120
1	MR. FISHBEIN: Next one is 9224. It's from		1	A. Again, the correlation would be, correlation is a	
2	Mr. Horvath dated 12/28/09.		2	mathematical term. It would be weighted with respect to the	
3	Q. And that's also one that you cut and paste, right?		3	percentage that it's made up for. So the percentage that each	
4	A. That's correct.		4	individual entity makes up the whole. So the higher the	
5	MR. FISHBEIN: Defense offers 9224.		5	correlate, the higher the degree of correlation would be the	
6	MS. APPS: No objection.		6	more of the parts that, the more complete information you have	
7	THE COURT: 9224 is also received.		7	for all the individual parts. If you just have one part, ten,	
8	(Defendant's Exhibit 9224 received in evidence)		8	fifteen percent, the correlation would be much weaker.	
9	Q. You mentioned, Mr. Tortora, that you had a personal trading		9	Q. And did you understand that the biggest stock within	
10	account, right?		10	Semiconductor Holders was Intel?	
11	A. Yes.		11	A. Yes, I did.	
12	Q. And that was in 2009, right?		12	Q. Now, how did you actually mechanically do your trading?	
13	A. I believe 2009, 2010.		13	A. What do you mean by that?	
14	Q. But not in 2008?		14	Q. In other words, did you use a personal computer or how did	
15	A. I believe I opened it the last month of 2008.		15	you do it?	
16	Q. But did you do any trading in '08?		16	A. A computer.	
17	A. I don't believe I did.		17	Q. And you did a large volume of trading, is that correct?	
18	Q. But basically this is an '09-'10 issue, right?		18	A. Yes, during the periods of time when I was trading.	
19	A. Yes.		19	Q. And I'll show you what's been marked as Defense Exhibits	
20	Q. And you traded what are called exchange traded funds,		20	9876 to 9893, which are your account statements, so you could	
21	right?		21	just have those for your reference. You've got one of those	
22	A. Yes.		22	for each month, December '08 to May 2010.	
23	Q. And those are baskets of stock that cover certain industry		23	Now, Mr. Tortora, isn't it a fact that there were days	
24	sectors, right?		24	when you literally did hundreds of trades in your account?	
25	A. Yes.		25	A. Yes.	

<p>CBKFNEW3 Tortora - cross Page 1121</p> <p>1 Q. And so, for example, on May 5th of 2009, do you recall that 2 you did hundreds of options trades just on that day? 3 A. No, but I don't deny that. 4 Q. Could you just, just look at May 5 and see if that 5 refreshes your memory? 6 MS. APPS: Is there an exhibit number? 7 MR. FISHBEIN: 9881. 8 A. Yes, I see that. 9 Q. And another example, do you recall that you did hundreds of 10 your own personal securities trades on a single day October 27, 11 2009? And that's going to be Exhibit 9886. 12 A. Yes. I mean, I don't recall, but I see that. 13 Q. Now, when you do hundreds of trades in a single day like 14 that, you have to input each one? 15 A. Yes. 16 Q. How many hours would you spend on a given day for those 17 hundreds of trades? 18 MS. APPS: Objection. Time. 19 THE COURT: Sustained. On a particular day are you 20 asking? 21 MR. FISHBEIN: October 27, 2009. You see that you did 22 hundreds of trades. How long did that take? 23 A. Not that long. 24 Q. What does "not that long" mean? 25 A. Well, it would be a matter of seconds to execute a trade.</p>	<p>CBKFNEW3 Tortora - cross Page 1123</p> <p>1 Q. No, it's your tab 338, it's Exhibit 9845. 2 A. I thought you said tab 3. 3 THE COURT: You did. 4 A. I'm with you. 5 Q. And is this an e-mail correspondence between you and your 6 stepfather in which you describe your attitude at that time 7 about your trading, your personal trading. 8 A. Yes. We have some discussion -- 9 MS. APPS: Just a moment. Your Honor, I object. It's 10 not in evidence. 11 MR. FISHBEIN: I'm just asking what the document is. 12 I will offer Exhibit 9845. 13 MS. APPS: Objection. 14 MR. FISHBEIN: And your Honor I believe it goes to his 15 state of mind. 16 THE COURT: Let me just look. 17 MR. FISHBEIN: 9845, tab 338 and I can direct your 18 attention, your Honor, to the part I'm looking at. 19 THE COURT: What part is that? 20 MR. FISHBEIN: It's one, two, three e-mails down, 21 March 31, 2009, 3:09 p.m., the last phrase on the first 22 paragraph. 23 THE COURT: So you're just looking to introduce that 24 section? 25 MR. FISHBEIN: Yes.</p>
<p>CBKFNEW3 Tortora - cross Page 1122</p> <p>1 Q. And would you do them all at once or you would follow the 2 market and do them over a period of time? 3 A. Correct. 4 Q. Follow the market and do it over a period of time? 5 A. Correct. 6 Q. Weren't you concerned yourself about how distracting your 7 personal trading was during that period of time? 8 A. Yes. 9 Q. You regard yourself as an impulsive trader, right? 10 A. No. 11 Q. You don't think you're an impulsive trader? 12 A. No. I think during those periods of time it was impulsive. 13 The period of time it was short and relative to the period of 14 time at Diamondback and those specific days that you refer to 15 were short. The time is not the issue. It's a matter of 16 seconds. Even if you want to say it's a hundred trades at 17 seconds, you're still talking minutes. It was more the act of 18 what I was doing, which I had defined as gambling. 19 Q. And it was distracting to be following the market and 20 worrying about what was happening with your personal portfolio, 21 right? 22 A. Yes, that's correct. 23 Q. If you could look at Defense Exhibit 9845. It's in your 24 tab 3. I'm sorry, it's tab 338. Do you see that? 25 A. Hold on. I'm sorry? 8591?</p>	<p>CBKFNEW3 Tortora - cross Page 1124</p> <p>1 THE COURT: All right, I'll allow that. 2 (Defendant's Exhibit 9845 received in evidence) 3 Q. Mr. Tortora, do you see on March 31, 2009 at 3:08p.m. you 4 wrote to your stepfather, you talked about that? 5 A. Yes. 6 MR. FISHBEIN: This is in evidence. I suppose, your 7 Honor, we can put it up on the screen because we've admitted 8 this in evidence. 9 THE COURT: If you can isolate it. 10 MR. FISHBEIN: Yes, Mr. Tortora, just that one e-mail, 11 March 31, 2009 at 3:09 p.m. 12 Q. So you're talking to your stepfather about your trading, 13 right? 14 A. Both -- the first paragraph is trading, my trading. The 15 second paragraph is Todd's trading. 16 Q. We're just looking at, because the Court has only admitted 17 the e-mail at 3:09 p.m., right? 18 THE COURT: He's saying it's two paragraphs. 19 MR. FISHBEIN: I'm sorry, I'm sorry, I'm sorry. I 20 apologize. 21 Q. So the first paragraph. You say, "Yeah, I round tripped my 22 gains and then lost some of my own money and I can't deal with 23 that because worked too hard for it." Do you see that? 24 A. Yes. 25 Q. Would it be fair to say that you have some concern about</p>

CBKFNEW3	Tortora - cross	Page 1125	CBKFNEW3	Tortora - cross	Page 1127
1	what's going on in your personal account?		1	offer was because you didn't want to spend every day trading in	
2	A. Well, it's what I'm saying there, I lost money and I work		2	M-Tech, yes?	
3	too hard for it and I can't deal with that. It's pretty		3	A. Yes.	
4	explicit.		4	Q. And weren't you concerned that this trading you were doing	
5	Q. At the end you say, quote, "I'm too impulsive/aggressive to		5	in your own account in 2009 would be a distraction?	
6	trade options. I think I'm in Vegas." Do you see that?		6	A. No, because there's a difference. When I'm trading	
7	A. Yes.		7	Diamondback money and trying to help Todd with Diamondback	
8	Q. Would that fairly characterize at the time in March 2009		8	money, which is other people's money, versus doing whatever I	
9	your attitude about your trading?		9	want with my own money.	
10	A. Yes. As I said, it was like gambling.		10	MR. FISHBEIN: Your Honor, I know you don't want to	
11	Q. And then at a later point in April of 2009, you actually		11	break, we're very near the end, and if I could perhaps have one	
12	made a vow to yourself that you would no longer trade options,		12	minute, two minutes, that I can discuss with the government --	
13	is that correct?		13	THE COURT: Do you people need a bathroom break?	
14	A. I don't recall.		14	Okay, five minutes.	
15	Q. I'm sorry, strike that. You decided that you would only,		15	(Continued on next page)	
16	you would only trade with profits above the initial investment		16		
17	you made in your personal account. Do you remember that?		17		
18	A. I don't recall.		18		
19	Q. If you look at Defense Exhibit 9847, it's tab 335. Do you		19		
20	see it?		20		
21	A. Yes.		21		
22	Q. And if you look at the top e-mail, does that refresh your		22		
23	memory that as of April 9, 2009 you had made a vow to yourself		23		
24	that you would only trade with profits above the original		24		
25	investment you made so that you did not lose the original		25		
CBKFNEW3	Tortora - cross	Page 1126	CBKFNEW3	Tortora - cross	Page 1128
1	amount of money you put into your account?		1	(In open court; jury not present)	
2	A. Mr. Fishbein, can you give me your definition or the proper		2	THE COURT: Okay, have a seat. Do you need to discuss	
3	definition of vow?		3	with the government on the record?	
4	MR. FISHBEIN: Defense offers Exhibit 9847. Again,		4	MR. FISHBEIN: No, I just need a few minutes to confer	
5	it's only the top e-mail.		5	and talk about some documents.	
6	THE COURT: Overruled -- I mean, sustained. I'm not		6	THE COURT: All right, so take five minutes. Meet and	
7	allowing it, no.		7	confer.	
8	Q. Did you think to yourself you would no longer trade with		8	(Recess)	
9	money above the original investment?		9	THE COURT: Okay, have a seat.	
10	A. I don't recall, Mr. Fishbein.		10	(Continued on next page)	
11	Q. Is it true that you originally had invested 900,000?		11		
12	A. No, I had 900,000 put into a Fidelity account which was		12		
13	inclusive of like a money market account.		13		
14	Q. But in any event you lost, as you said, hundreds of		14		
15	thousands of dollars?		15		
16	A. That's correct.		16		
17	Q. And that was in the second half of 2009, right?		17		
18	A. I don't remember over what stretch, but as I mentioned the		18		
19	trading was 2009 and 2010.		19		
20	Q. Now, you said, you said on direct, I believe, that Mr.		20		
21	Newman offered you to have your own book within M-Tech, right?		21		
22	A. Yes.		22		
23	Q. In 2008, right?		23		
24	A. Yes.		24		
25	Q. And I believe you said the reason you didn't take that		25		

<p>CBKFNEW3 Tortora - cross Page 1129</p> <p>1 (In open court; jury present)</p> <p>2 THE COURT: With that, I think Mr. Fishbein is going</p> <p>3 to wind down.</p> <p>4 MR. FISHBEIN: Yes. The first thing is I'm going to</p> <p>5 offer some exhibits, your Honor, which we've agreed with the</p> <p>6 government, I'm going to list the exhibit numbers and offer</p> <p>7 them. The first one is Defense Exhibit 2184, which is a</p> <p>8 research report to undisclosed recipients and the government</p> <p>9 and we stipulate that this came from Mr. Tortora's e-mail box</p> <p>10 at Diamondback, so we offer that.</p> <p>11 THE COURT: Keep going. I'll receive them all once</p> <p>12 you've finished.</p> <p>13 MR. FISHBEIN: The next one is Defense Exhibit 2165,</p> <p>14 also a research report to undisclosed recipients and the</p> <p>15 parties stipulate that it came from Mr. Tortora's e-mail box at</p> <p>16 Diamondback. The last one is Defense Exhibit 216, a research</p> <p>17 report to undisclosed recipients which the parties stipulate</p> <p>18 came from Mr. Tortora's e-mail box.</p> <p>19 THE COURT: So Defense Exhibits 2184, 2165 and 216 are</p> <p>20 received.</p> <p>21 (Defendant's Exhibits 2184, 2165 and 216 received in</p> <p>22 evidence)</p> <p>23 Q. And Mr. Tortora, you have in front of you three additional</p> <p>24 loose documents. I'll start with Defense Exhibit 591. Do you</p> <p>25 see that?</p>	<p>CBKFNEW3 Tortora - cross Page 1131</p> <p>1 THE COURT: Defendant's 8173 is received.</p> <p>2 (Defendant's Exhibit 8173 received in evidence)</p> <p>3 Q. And Defense Exhibits 8924, Mr. Tortora, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. An e-mail from you to Mr. Newman on November 20, 2008, is</p> <p>6 that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that was the date of Dell's earnings announcement in</p> <p>9 the quarter ended October, is that correct?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. You recall we talked about Dell's quarter ending in</p> <p>12 November of 2008? I'm sorry, reported in November 2008.</p> <p>13 A. Yes.</p> <p>14 Q. Okay, and do you see that in this e-mail at the bottom is a</p> <p>15 reference to Dell?</p> <p>16 A. Yes.</p> <p>17 MR. FISHBEIN: Defense offers Exhibit 8924.</p> <p>18 MS. APPS: I have a conditional no objection, your</p> <p>19 Honor. If Mr. Fishbein plans to ask questions about this</p> <p>20 exhibit, that's fine, but just to put it in without any</p> <p>21 explanation, we don't think that's appropriate.</p> <p>22 MR. FISHBEIN: We're offering the exhibit. If I need</p> <p>23 to ask any questions to authenticate it I will, but if she</p> <p>24 objects --</p> <p>25 THE COURT: I'll overrule it. Defense Exhibit 8924 is</p>
<p>CBKFNEW3 Tortora - cross Page 1130</p> <p>1 A. Yes.</p> <p>2 Q. Do you recognize that as an e-mail you got from Deutsche</p> <p>3 Bank to you August 4, 2008?</p> <p>4 A. Yes.</p> <p>5 Q. And this is during the quarter, Dell quarter ended</p> <p>6 August 28, right?</p> <p>7 A. Yes.</p> <p>8 Q. And do you see at the bottom of the first --</p> <p>9 MR. FISHBEIN: Well, Defense offers 591.</p> <p>10 MS. APPS: No objection.</p> <p>11 THE COURT: Defendant's 591 is received.</p> <p>12 (Defendant's Exhibit 591 received in evidence)</p> <p>13 Q. Okay, if it's received, I'm not going to ask further</p> <p>14 questions. Defense Exhibit 8173. Do you see that, Mr.</p> <p>15 Tortora?</p> <p>16 A. Yes.</p> <p>17 Q. Is this an example of another Kanowitz tracker that you</p> <p>18 received in November of 2008?</p> <p>19 A. Yes.</p> <p>20 Q. And that's the Kanowitz tracker that deals with average</p> <p>21 selling prices, etc., right?</p> <p>22 A. Yes.</p> <p>23 MR. FISHBEIN: Defense offers 8173.</p> <p>24 THE COURT: Any objection?</p> <p>25 MS. APPS: No objection.</p>	<p>CBKFNEW3 Tortora - cross Page 1132</p> <p>1 received.</p> <p>2 (Defendant's Exhibit 8924 received in evidence)</p> <p>3 Q. Mr. Tortora, over the course of several days now you</p> <p>4 testified about exchanging what you believed to be confidential</p> <p>5 company information, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the people, as I understand it, in addition to your</p> <p>8 statement that you gave certain information to Mr. Newman,</p> <p>9 other than Mr. Newman you talked about Sandy Goyal, right?</p> <p>10 A. Yes.</p> <p>11 Q. John Horvath, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Danny Kuo, right?</p> <p>14 A. Yes.</p> <p>15 Q. Sam Adonakis, right?</p> <p>16 A. Yes.</p> <p>17 Q. Ron Dennis?</p> <p>18 A. Yes.</p> <p>19 Q. And Lacey Higgins, right?</p> <p>20 A. Yes.</p> <p>21 Q. How about Mr. Abbasi? Did you view the information that</p> <p>22 you got from Mr. Abbasi as confidential company information as</p> <p>23 well?</p> <p>24 A. At times.</p> <p>25 Q. So we'll include Mr. Abbasi. Now, these are people other</p>

CBKFNEW3	Tortora - cross	Page 1133	CBKFNEW3	Tortora - cross	Page 1135
1	than Mr. Kuo who you knew before you came to Diamondback, is		1	A. Yes.	
2	that right?		2	Q. And you continued to receive confidential information about	
3	A. Yes.		3	companies afterwards, right?	
4	Q. So Mr. Goyal you knew quite well from your job at		4	A. Yes.	
5	Prudential, right?		5	Q. And so that included as late as August of 2010, right?	
6	A. Yes.		6	A. Probably, but I don't know the specific date.	
7	Q. And that was before you ever came to Diamondback, correct?		7	Q. Let's look at two Exhibits, Defense Exhibit 5712 which is	
8	A. Yes.		8	tab 317. Do you see that?	
9	Q. Before you knew Todd Newman?		9	A. Yes. 5712? Exhibit --	
10	A. Yes.		10	Q. Your tab 317. Hold on. Yes. Defense Exhibit 5712. Do	
11	Q. Mr. Abbasi, same; you knew him from Prudential, right?		11	you see that?	
12	A. Yes.		12	A. Yes.	
13	Q. Before you met Todd Newman, correct?		13	Q. Is that an e-mail from John Horvath to you, Adonakis, Kuo	
14	A. Yes.		14	and Abbasi dated July 8, 2010?	
15	Q. And Mr. Horvath was a client of yours at Prudential, right?		15	A. Yes.	
16	A. Yes.		16	MR. FISHBEIN: Defense offers Exhibit 5712.	
17	Q. So you knew him before you knew Todd Newman or before you		17	MS. APPS: No objection.	
18	came to Diamondback, right?		18	THE COURT: All right, Defendant's 5712 is received.	
19	A. Yes.		19	(Defendant's Exhibit 5712 received in evidence)	
20	Q. Mr. Adonakis you also knew from Prudential, right?		20	Q. And the subject, Mr. Tortora, is MS INTC checks, right?	
21	A. Yes.		21	A. Yes.	
22	Q. And you knew him before you met Todd Newman or before you		22	Q. And that's Intel checks, right?	
23	came to Diamondback, right?		23	A. Yes.	
24	A. Yes.		24	Q. Did you understand this to come from -- who did you	
25	Q. How about Ron Dennis; how did you know him?		25	understand this to come from?	
CBKFNEW3	Tortora - cross	Page 1134	CBKFNEW3	Tortora - cross	Page 1136
1	A. He was a client at Prudential.		1	A. At the time I was not even paying attention because I	
2	Q. So you also knew him before you met Todd Newman or came to		2	wasn't working and it's not a hundred percent clear who it's	
3	Diamondback, right?		3	coming from. There could be more than one person this could	
4	A. Yes.		4	have come from, me and John Horvath.	
5	Q. Now, Mr. Kuo we just talked about you met early on once you		5	Q. Well, when you wrote e-mails called MS INTC checks, you	
6	were at Diamondback, right?		6	said that the information came from Ms. Higgins, right?	
7	A. I spoke to him.		7	A. When I wrote MS INTC checks, the information generally came	
8	Q. You spoke to him.		8	from Miss Higgins. It could have been relayed from Mark	
9	A. Yes.		9	Lipacis to me, but either it came from Ms. Higgins to me or	
10	Q. But you reached out for him, right?		10	from Mark Lipacis to me.	
11	A. I reached out to Gurinder, who put me in touch with him.		11	Q. And you see here seeing MS INTC checks, you don't know who	
12	Q. But that was your initiative, correct?		12	it's from?	
13	A. Reaching out to Gurinder?		13	A. I just told you two people it may have come from. If you	
14	Q. Mr. Kuo wasn't somebody that Mr. Newman had a relationship		14	want me to speculate --	
15	with, correct?		15	Q. I don't want you to speculate. Do you know it was coming	
16	A. Not that I knew.		16	from John Horvath?	
17	Q. And Ms. Higgins; how do you know her?		17	A. No.	
18	A. From Intel.		18	Q. You told me that you were not paying attention?	
19	Q. That was many years before you came to Diamondback, right?		19	A. At that time I was not paying attention to e-mails. I had	
20	A. Yes.		20	just given them my e-mail after I left Diamondback to keep me	
21	Q. And before you knew Todd Newman, right?		21	in the loop in things, regardless of what the information was.	
22	A. Yes.		22	If you want me to go line by line to determine if it's	
23	Q. Now, you continued to stay in touch with Mr. Kuo,		23	confidential --	
24	Mr. Horvath and Mr. Adonakis after you left Diamondback, didn't		24	Q. No, I don't want you to do that. Your last day at	
25	you?		25	Diamondback was April 21, 2010?	

<p>CBKFNEW3 Tortora - cross Page 1137</p> <p>1 A. Yes. 2 Q. This is July 8, 2010? 3 A. Yes. 4 Q. So you had not just lost your Diamondback account. 5 A. If I said that, it was in error. When I lost my 6 Diamondback account, I transferred it to the G-Mail. 7 Q. You told your friends, Mr. Horvath, Mr. Adonakis, Mr. Kuo 8 and Mr. Abbasi to keep you in the loop, right? 9 A. Yes. 10 Q. To keep giving you the kind of information you were 11 exchanging before? 12 A. Every type of information, whatever information was on 13 those e-mail lists just add me to that distribution list. 14 Remove my Diamondback, put it on my G-Mail. The reason would 15 be as, I mentioned, I was interviewing and wanted to be kept up 16 to date with market ongoings. 17 Q. And if you'll now look at Defense Exhibit 2674. It's your 18 tab 319. Do you see that? 19 A. Yes. 20 Q. Is that an e-mail from Danny Kuo to you, Adonakis, Horvath 21 and Abbasi in October of 2010? 22 A. Yes. 23 Q. Defense offers Exhibit 2674. 24 MS. APPS: No objection. 25 THE COURT: All right, defendant's 2674 is received.</p>	<p>CBKFNEW3 Tortora - cross Page 1139</p> <p>1 group of friends, that is, Adonakis, Horvath and Kuo, after you 2 left Diamondback, right? 3 A. Rephrase that question? 4 Q. Yes, and you continued to receive information from Kuo, 5 Adonakis and Horvath after you left Diamondback, right? 6 A. Yes, if you mean e-mails as information, yes. 7 Q. Like we just looked at, right? 8 A. Yes. 9 Q. So the activities that you talked about in your testimony 10 started before you came to Diamondback, right? 11 A. Activities? Can you be more specific? 12 Q. The first thing Ms. Apps asked you or one of the first 13 things is whether you received confidential company 14 information, right? 15 A. Yes. 16 Q. And that started with you in your mind before you came to 17 Diamondback, right? 18 A. That's correct. 19 Q. And before you met Todd Newman, right? 20 A. That's correct. 21 Q. And you continued to do it after you left Diamondback, 22 right? 23 A. Continued to do it? What does "it" refer to? 24 Q. Receive information from this group. 25 A. Yes, but, Mr. Fishbein, it sounds like you're trying to say</p>
<p>CBKFNEW3 Tortora - cross Page 1138</p> <p>1 (Defendant's Exhibit 2674 received in evidence) 2 Q. Mr. Horvath -- I mean, Mr. Tortora, this is an Invidia 3 update, right? 4 A. Yes. 5 Q. It says tracking to 835 million for the quarter, 10 million 6 shy of consensus, right? 7 A. Yes. 8 Q. GM doesn't look too good. Do you see that? 9 A. Yes. 10 Q. So as of October of 2010 you still were receiving 11 information from your group about these various stocks, right? 12 A. Yes. 13 Q. And did you believe this to be confidential company 14 information? 15 A. Once again, I was not paying attention to these e-mails. I 16 don't even remember reading these e-mails. If you would like 17 me to go line by line and determine that, I will. 18 Q. No, that's okay. Now, you acknowledged, I believe, that 19 you got information while you were at Prudential that you 20 regarded to be confidential company information, right? 21 A. Yes. 22 Q. And that was information about Intel, for example? Right? 23 A. Yes. 24 Q. And you see here, you continued to get -- strike that. 25 This information, you continued to get information from this</p>	<p>CBKFNEW3 Tortora - cross Page 1140</p> <p>1 I received confidential information before and confidential 2 information after. I don't think we established that I 3 recalled receiving confidential information after. 4 Q. So your testimony is that these e-mails I just showed you, 5 you just don't know whether it's confidential or not, is that 6 right? 7 A. Correct. Today would be the first time I'm reading them. 8 MR. FISHBEIN: Thank you very much. I have nothing 9 further. 10 THE COURT: Nothing further. All right, Mr. 11 Weingarten. 12 MR. WEINGARTEN: Can we step up two seconds? 13 THE COURT: All right. Ready. 14 (Continued next page) 15 16 17 18 19 20 21 22 23 24 25</p>

CBKFNEW3	Tortora - cross	Page 1141	CBKFNEW3	Tortora - cross	Page 1143
1	(At the sidebar)		1	had a conversation with him?	
2	MR. WEINGARTEN: Only this, that Mr. Fishbein covered		2	A. I don't recall, no.	
3	a lot of stuff I was going to cover. I would be much more		3	Q. It's true you had a conversation with him when you were an	
4	efficient if we both go to lunch and came back. I know we		4	analyst at Prudential?	
5	usually go to one, it would save time, I would be more		5	A. That was one occasion, yes.	
6	efficient, I would cut stuff and I would be much quicker. If		6	Q. Do you remember the subject?	
7	you wish I can go through it now and thumb through it a little,		7	A. I believe it was related to Dell.	
8	but I would be more efficient if we broke now and came back at		8	Q. And Level Global was a customer of Prudential, correct?	
9	1:30.		9	A. That's correct.	
10	THE COURT: I'm not sure, I mean, why do you think it		10	Q. So in other words, Level Global, the hedge fund, paid	
11	will be more efficient?		11	Prudential, a sell side operation, for information, correct?	
12	MR. WEINGARTEN: Because I'll sit down and think about		12	A. That's correct.	
13	just what happened and I'll cut as opposed to trying to do it		13	Q. And you were the analyst who was providing the information	
14	on the fly. That's all.		14	on Dell, correct?	
15	THE COURT: Any views?		15	A. That's correct.	
16	MS. APPS: No objection, your Honor.		16	Q. At some point in the trial we saw one of your sell side	
17	THE COURT: It's just kind of early. Do you have any		17	reports on Dell, do you remember that?	
18	views?		18	A. Yes.	
19	MR. NATHANSON: No, we don't have.		19	Q. And your name was under the byline, correct?	
20	MR. WEINGARTEN: I mean, to be cleaner and more		20	A. Yes.	
21	efficient, that's all.		21	Q. How many sell side reports did you put out under your own	
22	THE COURT: No, let's gets started. I want to get		22	name? Do you have any idea?	
23	started.		23	A. Dozens.	
24	(Continued next page.		24	Q. Dozens. And how many stocks did you cover?	
25			25	A. Roughly ten at Prudential.	
CBKFNEW3	Tortora - cross	Page 1142	CBKFNEW3	Tortora - cross	Page 1144
1	(In open court)		1	Q. And how frequently would those reports come out?	
2	THE COURT: Okay, we'll have cross-examination by Mr.		2	A. Well, if you're speaking a particular stock maybe it would	
3	Weingarten of Mr. Tortora.		3	be two reports, two to three reports in a given order.	
4	MR. WEINGARTEN: May I proceed, your Honor?		4	Q. And for how long a period were you the author of those	
5	THE COURT: Yes, please.		5	reports?	
6	MR. WEINGARTEN: Thank you, your Honor.		6	A. I believe it was about eight months, give or take.	
7	CROSS-EXAMINATION		7	Q. And in response to that work you had a conversation with	
8	BY MR. WEINGARTEN:		8	Mr. Chiasson about Dell, do you recall?	
9	Q. Mr. Tortora, good afternoon, sir.		9	A. Yes.	
10	A. Good afternoon.		10	Q. And did you have any other conversations with him in your	
11	Q. Reed Weingarten. We haven't met before.		11	life?	
12	A. That's correct.		12	A. Yes, I recall one conversation at Diamondback.	
13	Q. I have the privilege of representing Mr. Chiasson, seated		13	Q. Do you remember what that was about?	
14	over there.		14	A. Apple.	
15	A. Yes, sir.		15	Q. And you had a conversation with Mr. Chiasson or were there	
16	Q. Do you know Mr. Chiasson?		16	other people on the phone?	
17	A. I do.		17	A. I believe both instances Sam was on the line.	
18	Q. When did you meet him?		18	Q. That's --	
19	A. I recall speaking to him on a number of occasions.		19	A. Sam Adonakis and Sam asked me if I would mind speaking with	
20	Q. This is the first time during this trial that you've ever		20	Chiasson and he put me on the phone.	
21	been in his physical presence?		21	Q. The Dell conversation was when you were at Diamondback, is	
22	A. I don't recall if I would have crossed paths with him at a		22	that correct?	
23	conference, I don't remember. It's possible, I don't remember		23	A. That's correct.	
24	one way or the other.		24	Q. Now, were there ever occasions where you actually	
25	Q. There's no occasion when you actually shook his hand and		25	physically visited Level Global?	

CBKFNEW3	Tortora - cross	Page 1145	CBKFNEW3	Tortora - cross	Page 1147
1	A. There may have been a time when I met Sam for lunch, but I		1	Weingarten?	
2	don't believe ever, I don't ever believe I was actually in the		2	MR. WEINGARTEN: Yes.	
3	office. I may have been in the lobby.		3	THE COURT: All right. Ladies and gentlemen, I want	
4	Q. Do you have any recollection of Mr. Chiasson being up at		4	to I think talk about this exhibit. Rather than do it on your	
5	Diamondback?		5	time I think I'll do it on our time. Why don't we break for an	
6	A. Not when I was there, no.		6	early lunch today. We'll pick up at 1:30. Don't discuss the	
7	Q. I'm just a little unclear. So when you worked at		7	case, of course, but stretch your legs, get a bite to eat and	
8	Diamondback there was a period of time when you would commute		8	I'll see you at 1:30.	
9	from Manhattan up to Connecticut, correct?		9	(Luncheon recess)	
10	A. Yes.		10	(Continued next page)	
11	Q. And then after a short while you worked from Manhattan?		11		
12	A. Yes.		12		
13	Q. And was that at a Diamondback facility in Manhattan or from		13		
14	your home?		14		
15	A. The large majority was from my home. There were times in		15		
16	which I visited, I worked from the Diamondback facility in		16		
17	Manhattan.		17		
18	Q. But generally you, I guess your home or apartment you were		18		
19	working from home?		19		
20	A. That's correct.		20		
21	Q. Now, is it fair to say that in connection with your work at		21		
22	Diamondback you had sort of many, many contacts in the Wall		22		
23	Street world from whom you received information and shared		23		
24	information, correct?		24		
25	A. Can you just define what you mean by contacts?		25		
CBKFNEW3	Tortora - cross	Page 1146	CBKMNEW4		Page 1148
1	Q. Well, people in the business with whom you spoke.		1	THE COURT: I am trying to figure out why this is	
2	A. Yes.		2	relevant and what all the rest of this thing is. Maybe we can	
3	Q. When you were cooperating with the FBI did you make an		3	take this time to figure out if there are going to more	
4	effort to compile that list?		4	objections going forward.	
5	A. I didn't make an effort to compile the entire list of		5	You're looking to get in the entire exhibit as what?	
6	people within the Wall Street world that I spoke with, but I		6	MR. WEINGARTEN: I'm particularly interested in	
7	did provide them with lists of individuals that I spoke with in		7	certain parts. I'm particularly interested in part about the	
8	varying different buckets. For example, company management I		8	company representatives. I thought it would be easier to have	
9	would give them a list of who I spoke with at company		9	a document than simply elicit the information without help.	
10	management as per an example.		10	THE COURT: It's the defendant's statement, but what	
11	Q. Jenks material 351681, it should be in the book, if you		11	are you trying -- should I excuse the witness?	
12	could take a look at it.		12	Mr. Tortora, you get lunch, too. There is no reason	
13	A. Mr. Weingarten, what tab would that be?		13	to keep you here at this point.	
14	Q. It should be listed 351681. Do you have it? It should be		14	THE WITNESS: Thank you, your Honor.	
15	right in the front.		15	THE COURT: Be here a little before 1:30.	
16	A. Yes.		16	Who is not on this list? Is that the point?	
17	Q. Is that the list that you compiled for the FBI?		17	MR. WEINGARTEN: No, your Honor. I thought it would	
18	A. Hang on. Let me just go through this. Yes.		18	an easy way to sum up. His conduct has been a significant part	
19	MR. WEINGARTEN: Move it into evidence, your Honor?		19	of the conversation, particularly the company representatives.	
20	THE COURT: Any objection?		20	I don't feel particularly strong about it.	
21	MS. APPS: Yes, your Honor. I don't understand what		21	THE COURT: I don't know why his contacts in the world	
22	grounds under which it's coming in. It's hearsay. Prior,		22	are relevant.	
23	something prepared at the direction of the FBI. 401 objection		23	MR. WEINGARTEN: The company representatives truly	
24	as well.		24	are.	
25	THE COURT: You want to introduce the whole thing, Mr.		25	THE COURT: Only if they are giving him inside	

<p>CBKMNEW4 Page 1149</p> <p>1 information. I guess conceivably if they are not -- I am not 2 sure where you are going with it. If it's to prove that your 3 client's name is not on the list, I don't even know if it is. 4 Is it? 5 MR. WEINGARTEN: It is not. 6 Your Honor, I will make this easy. I withdraw this. 7 THE COURT: You've ended up getting your wish, Mr. 8 Weingarten. 9 MR. WEINGARTEN: It was not designed that way. Maybe 10 it was. 11 THE COURT: I'm not suggesting you did anything 12 improper. I am just saying we have now broken. 13 Should we be talking about other exhibits that you 14 intend to introduce through the cross? 15 MR. WEINGARTEN: I provided all my exhibits to the 16 government this morning. We had a discussion about the 17 exhibits they objected to this morning. 18 THE COURT: This one didn't make the list, apparently. 19 Are there others that didn't make the list? You told them you 20 were going to introduce this exhibit, 3516-81? 21 MR. WEINGARTEN: Yes. 22 MS. APPS: I didn't realize. It's my mistake. I 23 apologize. 24 THE COURT: Are you looking to introduce everything 25 that's in the two binders?</p>	<p>CBKMNEW4 Page 1151</p> <p>1 AFTERNOON SESSION 2 1:30 p.m. 3 THE COURT: The jury is ready to go. Mr. Weingarten 4 is ready to go. 5 Anything else we need to discuss before we bring them 6 out? 7 MS. APPS: No. 8 THE COURT: Let's do this thing. 9 (Jury present) 10 THE COURT: I hope you had a good lunch. You like the 11 earlier lunch or you like the 1:00 lunch? 12 JURORS: 1:00. 13 THE COURT: I think it is usually better to have the 14 afternoon a little shorter than the morning. There is a little 15 advantage to that. 16 We are going to resume the cross-examination of 17 Mr. Tortora by Mr. Weingarten. 18 Q. Mr. Tortora, good afternoon, sir. 19 A. Good afternoon. 20 Q. I would like to turn to your relationship with Sam 21 Adondakis. Did I understand your testimony correctly that you 22 became acquainted with Mr. Adondakis in California? 23 A. That's correct. 24 Q. And he worked with you at Prudential? 25 A. That's correct.</p>
<p>CBKMNEW4 Page 1150</p> <p>1 MR. WEINGARTEN: There is just one binder. 2 THE COURT: I have two. One is 3500 material and one 3 is cross. 4 MR. WEINGARTEN: Jencks material I'm having just in 5 case I need to refresh or impeach. You can put that one aside. 6 And in truth, my statements at the bench were exactly how I 7 felt. Over lunch I am going to pare down. 8 THE COURT: I want to know if we need to use time now 9 or save some time at the end of the lunch hour to go over the 10 exhibits that were controversial. 11 MR. WEINGARTEN: The list of the exhibits are in the 12 binder. 13 THE COURT: You are not objecting to anything in the 14 binder? 15 MS. APPS: No. We already waived the objections. I 16 just missed this one. 17 THE COURT: I know you don't eat, so you are just 18 going to work here. 19 Let's get ready to go at about 1:25 or so. 20 (Luncheon recess) 21 22 23 24 25</p>	<p>CBKMNEW4 Page 1152</p> <p>1 Q. And that's the first time you came to know him? 2 A. Yes. 3 Q. And did you actually work together? 4 A. We did work under Mark Lipacis on the same team. 5 Q. Were there occasions when you worked together on the same 6 projects? 7 A. I don't believe so. 8 Q. Did he have anything to do with Intel? 9 A. No, he did not. 10 Q. But you did? 11 A. I did. 12 Q. But he didn't assist you on Intel? 13 A. He did not. 14 Q. Now, when you sought employment at Diamondback did you seek 15 Mr. Adondakis' help? 16 A. I don't recall. He was employed at the time. It's 17 certainly possible that I may have reached out to friends, but 18 I don't recall. 19 Q. Let me show you Defense Exhibit 8591. It would be in your 20 book in order. I think the defense exhibits are first. 21 THE COURT: 8591? 22 MR. WEINGARTEN: Yes. 23 Q. Are you able to identify that, sir? 24 A. Yes. 25 Q. Is that an e-mail exchange between you and Mr. Adondakis</p>

<p>CBKMNEW4 Page 1153</p> <p>1 relating to your efforts to get employed by Diamondback?</p> <p>2 MS. APPS: I'm sorry. I don't have the document.</p> <p>3 A. Defense Exhibit 8591?</p> <p>4 Q. Yes.</p> <p>5 THE COURT: Are you still looking for it, Ms. Apps?</p> <p>6 MS. APPS: I don't have it.</p> <p>7 Q. Is that an e-mail at the top of July 19, 2007 between you</p> <p>8 and Mr. Adondakis?</p> <p>9 A. And that supersedes your earlier question, Mr. Weingarten?</p> <p>10 Q. Yes.</p> <p>11 A. Yes, it is.</p> <p>12 MR. WEINGARTEN: Move it into evidence.</p> <p>13 THE COURT: Any objection?</p> <p>14 MS. APPS: No objection.</p> <p>15 THE COURT: Defense Exhibit 8591 is received.</p> <p>16 (Defendant's Exhibit 8591 received in evidence)</p> <p>17 MR. WEINGARTEN: Can we publish, please?</p> <p>18 THE COURT: Sure.</p> <p>19 Q. You go from the back to the front in terms of finality. Do</p> <p>20 you see that, Mr. Tortora?</p> <p>21 A. Yes.</p> <p>22 Q. Could you start with the e-mail from you to Mr. Adondakis</p> <p>23 on July 18 at 3:32 p.m. on page 2 in the middle of the page</p> <p>24 where you say: Hey, Sam.</p> <p>25 You see where I am?</p>	<p>CBKMNEW4 Page 1155</p> <p>1 reports on MSCC?</p> <p>2 A. Yes.</p> <p>3 Q. And does he comply with that?</p> <p>4 A. Yes, he does.</p> <p>5 Q. So Sam was helping you here, correct?</p> <p>6 A. Yes, he was.</p> <p>7 Q. And you get the job, correct?</p> <p>8 A. No, I do not get the job.</p> <p>9 Q. This was not to Diamondback?</p> <p>10 A. Correct.</p> <p>11 Q. This was to some other company?</p> <p>12 A. Yes.</p> <p>13 Q. You eventually do get a job at Diamondback, correct?</p> <p>14 A. Yes.</p> <p>15 Q. You begin working when?</p> <p>16 A. September 4.</p> <p>17 Q. And soon thereafter do you seek to start working informally</p> <p>18 with Sam Adondakis?</p> <p>19 A. I'm sorry. Could ask you that again.</p> <p>20 Q. Soon after starting work at Diamondback, did you contact</p> <p>21 Mr. Adondakis at Level Global and seek to work with him?</p> <p>22 A. What do you mean by seek to work with him?</p> <p>23 Q. Let's look at 8616 and see if that helps.</p> <p>24 Are you able to identify that document, sir?</p> <p>25 A. Yes.</p>
<p>CBKMNEW4 Page 1154</p> <p>1 A. Yes.</p> <p>2 Q. Read it to yourself and then, if you could, summarize what</p> <p>3 you are asking Mr. Adondakis to do.</p> <p>4 A. So I'm asking Sam for assistance in financial analysis on a</p> <p>5 company called Microsemi. The ticker is MSCC. There are</p> <p>6 several items I am asking if he could help with, many of those</p> <p>7 items which a person out of work wouldn't have access to.</p> <p>8 Q. You're out of work now?</p> <p>9 A. Yes.</p> <p>10 Q. And Sam is at Level Global, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. So you're asking him friend to friend for some help?</p> <p>13 A. Yes.</p> <p>14 Q. And you're asking for specific help at a company because</p> <p>15 the company where you want to work has asked you to opine that,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And does Sam comply?</p> <p>19 A. Yes, I believe he does.</p> <p>20 Q. And do you also ask him for access to some Internet or some</p> <p>21 computer system that he has because he's employed at Level</p> <p>22 Global?</p> <p>23 A. Which number here?</p> <p>24 Q. Same document, the e-mail above.</p> <p>25 Did you ask to borrow his access to first call to get</p>	<p>CBKMNEW4 Page 1156</p> <p>1 Q. What is it?</p> <p>2 A. It's an e-mail exchange between Sam and myself on October</p> <p>3 1, 2007.</p> <p>4 Q. And this would be a couple of weeks after you started at</p> <p>5 Diamondback?</p> <p>6 A. Yes. Roughly a month.</p> <p>7 MR. WEINGARTEN: Move it into evidence.</p> <p>8 MS. APPS: No objection.</p> <p>9 THE COURT: Defendant's Exhibit 8616 received.</p> <p>10 (Defendant's Exhibit 8616 received in evidence)</p> <p>11 MR. WEINGARTEN: Published.</p> <p>12 Q. Starting at the bottom, the e-mail from you at 7:22 p.m.,</p> <p>13 you to Mr. Adondakis. Your start date was the beginning of</p> <p>14 September?</p> <p>15 A. That's correct.</p> <p>16 Q. So you're at Diamondback three or four weeks?</p> <p>17 A. Yes.</p> <p>18 Q. And what do you say to Sam?</p> <p>19 A. Sam, hey, we should start swapping data points on names.</p> <p>20 Let's catch up later this week.</p> <p>21 Q. To your knowledge, would that be the first time you're at</p> <p>22 Diamondback when you're making the suggestion to Sam, or were</p> <p>23 there earlier ones?</p> <p>24 A. I don't recall.</p> <p>25 Q. What's Sam's response?</p>

<p>CBKMNEW4 Page 1157</p> <p>1 A. Sounds good. Let's chat tomorrow, gives me his office 2 number. 3 Q. Thereafter, did you in fact exchange data points with Sam 4 Adondakis at Level Global? 5 A. Do you want my definition of data points or your 6 definition? 7 Q. The data points that you are talking about in the exhibit 8 we just looked at. 9 A. Data points in this case would be general information. And 10 to my recollection, it was months later before Sam and I 11 started at volume exchanging data points. I say at volume 12 because I don't know if there was one or two conversations that 13 occurred. But when Ms. Apps asked me to explain how the group 14 formed, Sam was one of the later ones to come into that group. 15 Q. Let's take a look at 8620. 16 Can you identify that, sir? 17 A. It's an e-mail between Sam and I. 18 Q. Date? 19 A. I'm sorry. On October 11 and October -- no. October 5, 20 October 11, and October 12 of 2007. 21 MR. WEINGARTEN: Move it into evidence. 22 MS. APPS: No objection. 23 THE COURT: Defendant's 8620 is received. 24 (Defendant's Exhibit 8620 received in evidence) 25 MR. WEINGARTEN: Publish.</p>	<p>CBKMNEW4 Page 1159</p> <p>1 THE COURT: Defendant's Exhibit 8623 is received. 2 (Defendant's Exhibit 8623 received in evidence) 3 MR. WEINGARTEN: Publish, please. 4 Q. So the one below from you to Sam, would you read that, 5 please? 6 A. Hey, you back. Give me a ring to catch up, and there is my 7 work number. 8 Q. I assume sitting here today you don't remember the 9 conversation that took place just then, correct? 10 A. Was there a conversation? 11 Q. Or if there was. 12 A. No, I don't recall. 13 Q. Let's look at the e-mail on top of that where Sam says to 14 you: Got your voice mail and no worries. I'll keep everything 15 on the D-low. Did you determine that to be the down low? 16 A. Yes. 17 Q. Do you know what he was talking about there? 18 A. No idea. 19 Q. But this follows a couple of occasions when you are 20 offering data points to Sam, correct? 21 A. Yes. 22 Q. Let's just look at 8629, please. 23 Are you able to identify that one? 24 A. Yes. 25 Q. And that's an e-mail exchange on October 23, 2007 between</p>
<p>CBKMNEW4 Page 1158</p> <p>1 Q. So October 5 is an e-mail from you to Mr. Adondakis. It 2 just says e-mail and has no information. Do you have any idea 3 what that's about? 4 A. No. 5 Q. So let's look at the one where we have some idea what it's 6 about. That would be the one above that. That's dated October 7 11, 2007 and that's from -- the one above that is earlier. Do 8 you see that? No. The one -- I'm sorry. The one in the 9 middle from Sam to you and he says: Have a second to chat? If 10 so, you can call my cell. And then the e-mail on top of that 11 is from you to Sam, and what do you say to him? 12 A. Got -- hey, Sam, got some data points from contact. We can 13 talk today or Monday. Let me know. 14 Q. This is about a month after you're at Diamondback, correct? 15 A. Yes. 16 Q. You're offering him data points, correct? 17 A. Yes. 18 Q. And let's look at 8623. Are you able to identify that? 19 A. Yes. 20 Q. And is that another e-mail exchange between the two of you? 21 A. Yes. 22 Q. Dated what? 23 A. October 16 and October 17 of 2007. 24 MR. WEINGARTEN: Move it in. 25 MS. APPS: No objection.</p>	<p>CBKMNEW4 Page 1160</p> <p>1 the two of you? 2 A. Yes. 3 MR. WEINGARTEN: Move it in. 4 MS. APPS: No objection. 5 THE COURT: Defendant's 8629 is received. 6 (Defendant's Exhibit 8629 received in evidence) 7 MR. WEINGARTEN: Publish. 8 Q. And this is another e-mail from you to Sam, October 23, 9 correct? 10 A. Yes. 11 Q. And now you're at Diamondback six or seven weeks? 12 A. Yes. 13 Q. And what do you say to Sam? 14 A. I say, hey, Sam, give me a call some time this week to 15 catch up and swap ideas/data points around earnings. 16 Q. Now, in response to questions from the prosecutor you 17 talked about PGR, correct? 18 A. Yes. 19 Q. And PGR, just to get us together, is the expert network 20 where hedge fund people were connected to people in the 21 industry by the expert corporation or the expert company, PGR, 22 correct? 23 A. Yes. 24 Q. And as you testified, I think, yesterday, it was your 25 conclusion that many of these experts spoke to many hedge fund</p>

<p>CBKMNEW4 Page 1161</p> <p>1 people, correct?</p> <p>2 A. Yes.</p> <p>3 Q. You introduced PGR to Sam Adondakis, isn't that correct?</p> <p>4 A. When you say introduced, I introduced Sam to someone at PGR</p> <p>5 or PGR the entity?</p> <p>6 Q. Let's see if that helps, 8723.</p> <p>7 Are you able to identify that document, sir?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It's an e-mail between Sam and myself.</p> <p>11 Q. And is it dated April 14, 2008?</p> <p>12 A. Yes.</p> <p>13 Q. And does it relate to PGR?</p> <p>14 A. Yes.</p> <p>15 MR. WEINGARTEN: Move it in.</p> <p>16 MS. APPS: No objection.</p> <p>17 THE COURT: Defendant's 8723 is received.</p> <p>18 (Defendant's Exhibit 8723 received in evidence)</p> <p>19 Q. Is it fair to say that you did a thorough review or</p> <p>20 attempted to do a thorough review of the consultants at PGR</p> <p>21 yourself?</p> <p>22 A. Yes. Again, this question supersedes the previous one?</p> <p>23 Q. Yes, that's fair.</p> <p>24 A. I'm sorry. Can you repeat that again?</p> <p>25 Q. The first one or the second one?</p>	<p>CBKMNEW4 Page 1163</p> <p>1 happening, though, I would see Sam doing calls with some of the</p> <p>2 people I were doing calls with and I would tell Sam, Sam, I am</p> <p>3 not going to do calls with those people. I'll spend my time</p> <p>4 doing calls with other people.</p> <p>5 Q. So you reached an agreement with your friend that you would</p> <p>6 do calls with expert X and provide him with the results and he</p> <p>7 would do interviews with expert Y and provide you with the</p> <p>8 results, correct?</p> <p>9 A. Well, again, it was bigger than just with Sam and I, but</p> <p>10 yes.</p> <p>11 Q. But you certainly did that with Sam Adondakis?</p> <p>12 A. Yes.</p> <p>13 Q. Is it also true that you endeavored to encourage Sam to</p> <p>14 hire certain consultants?</p> <p>15 A. Who are you referring to?</p> <p>16 Q. Let's take a look at 3185.</p> <p>17 Are you able to identify that?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. It's an e-mail from myself to Todd which I forwarded to Sam</p> <p>21 and Sam responds to me on January 21, 2009.</p> <p>22 MR. WEINGARTEN: Move it in.</p> <p>23 MS. APPS: No objection.</p> <p>24 THE COURT: Defense Exhibit 3185 is received.</p> <p>25 (Defendant's Exhibit 3185 received in evidence)</p>
<p>CBKMNEW4 Page 1162</p> <p>1 A. Whichever one you are asking me.</p> <p>2 Q. Is it fair to say that you did a review of the PGR</p> <p>3 consultants yourself trying to determine which ones were</p> <p>4 useful?</p> <p>5 A. Well, I don't recall, but based on this it appears I am</p> <p>6 informing Sam who I have met with and who I have not met with,</p> <p>7 but I'm not even sure how I would get the list of people that I</p> <p>8 haven't met with.</p> <p>9 Q. You prepared the list, correct?</p> <p>10 A. I did prepare the list. And I'm trying to deduce what this</p> <p>11 list is.</p> <p>12 Q. On the already met, just at the top, those are the ones</p> <p>13 that you have interviewed or worked with, correct?</p> <p>14 A. They would have been the list that I have spoken to.</p> <p>15 Q. And you gave Sam a report on how good they were, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And then the group that you haven't met you were advising</p> <p>18 him that those were available, but you hadn't worked with them</p> <p>19 yet, correct?</p> <p>20 A. I believe so.</p> <p>21 Q. Didn't you work out an arrangement with Sam Adondakis at</p> <p>22 Level Global where you would work together with some of these</p> <p>23 PGR consultants?</p> <p>24 A. There were times at which Sam and I discussed that it did</p> <p>25 not make sense for us to overlap. The way I recall it</p>	<p>CBKMNEW4 Page 1164</p> <p>1 MR. WEINGARTEN: If we could highlight the second</p> <p>2 e-mail from Mr. Tortora to Mr. Adondakis on January 21 at 8:57</p> <p>3 a.m.</p> <p>4 Q. Would you read your language, please.</p> <p>5 A. FYI, we signed up Scott today and we will sign up venk</p> <p>6 Friday. You should sign up both.</p> <p>7 Q. You're communicating to your friend Sam Adondakis, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And Sam doesn't work with you; he works at a different</p> <p>10 hedge fund?</p> <p>11 A. That's right.</p> <p>12 Q. He's an analyst there, right?</p> <p>13 A. Yes.</p> <p>14 Q. Scott is Scott Jones?</p> <p>15 A. Scott is Scott Jones.</p> <p>16 Q. Is he a friend of yours?</p> <p>17 A. Yes.</p> <p>18 Q. And he was working for Diamondback as a consultant?</p> <p>19 A. Scott was working for JP Morgan, then he left JP Morgan and</p> <p>20 then signed up for Diamondback as a consultant.</p> <p>21 Q. And you were encouraging Sam to do the same with him at</p> <p>22 Level Global, correct?</p> <p>23 A. Sam and I had discussions about it with Scott, and Sam knew</p> <p>24 Scott -- Sam and Scott had a separate relationship, which I</p> <p>25 can't comment on what their relationship was. So I will</p>

<p>CBKMNEW4 Page 1165</p> <p>1 acknowledge here that I said you should sign up both. And I 2 don't believe to my recollection venk was ever signed up. 3 Q. Scott Jones, he was a friend of yours that you were 4 encouraging your friend Sam Adondakis to hire at Level Global, 5 correct? 6 A. Again, that's not how I recall it playing out, but I will 7 acknowledge I said you should sign up both here. 8 Q. Did you encourage Mr. Adondakis to hire any of your other 9 friends? 10 A. Any of the consultants at Diamondback? 11 Q. Yes. 12 A. Go ahead. Show me. 13 Q. 9874. 14 Are you able to identify that? 15 A. Yes. E-mail exchange between Sam and I, June 10, 2009. 16 MR. WEINGARTEN: Move it in. 17 MS. APPS: No objection. 18 THE COURT: Defense Exhibit 9874 is received. 19 (Defendant's Exhibit 9874 received in evidence) 20 Q. Let's start at the very bottom, your e-mail to Sam on June 21 10 at 9:23 a.m. We may have to go to the second page. It's on 22 the back of mine, Mr. Tortora. I don't know if you see it. 23 A. Why don't I see that. 24 Q. Do you have that, where it says, would you be interested in 25 paying John?</p>	<p>CBKMNEW4 Page 1167</p> <p>1 Q. Are you able to identify that, sir? 2 A. Yes. 3 Q. What is it? 4 A. An e-mail from Bill Williams from JNK to myself, which I 5 forwarded to Todd, then to Sam. I have an e-mail exchange with 6 Sam on March 18, 2009. 7 MR. WEINGARTEN: Move it in. 8 MS. APPS: No objection. 9 THE COURT: Defense Exhibit 8995 is received. 10 (Defendant's Exhibit 8995 received in evidence) 11 Q. Do you see on the fourth e-mail down, on March 18, 1:57 12 p.m., you say: Sam, you cool with forwarding me JNK e-mails 13 and giving me updates? I hate these guys. 14 Do you see that? 15 A. Yes. 16 Q. JNK, I think we established earlier in the trial, was a 17 sell side outfit? 18 A. Did we? 19 Q. I don't know if we or we didn't. Are they? 20 A. I am not sure. 21 Q. Why were you asking for these e-mails? 22 A. I'm sorry? 23 Q. What were you asking for here? 24 A. I was asking him if he could forward the JNK e-mails. 25 Q. Why did you want them?</p>
<p>CBKMNEW4 Page 1166</p> <p>1 A. Yes, yes, yes, got you. 2 Q. Would you read that? 3 A. Would you be interested in paying John, like you do Scott? 4 Just don't want to lose him, and we could also get him to do 5 more if you pay him. Let's chat about this whenever. 6 Q. First of all, this Scott the same Scott we were referring 7 to two minutes ago? 8 A. Yes. 9 Q. And who is John? 10 A. John Souza. 11 Q. Is John Souza the person that you mentioned that you used 12 to work for and then he worked for you and he's also a friend? 13 A. That's correct. 14 Q. He's a consultant in the world? 15 A. I'm sorry? 16 Q. He's a consultant? 17 A. He was a consultant for Diamondback, yes. 18 Q. And you were encouraging Mr. Adondakis to hire him at Level 19 Global, correct? 20 A. I was asking him if he would be interested. 21 Q. Now, did you ask Mr. Adondakis at Level Global to provide 22 you with some of the work that he was producing at Level 23 Global? 24 A. Yes. 25 MR. WEINGARTEN: 8995, please.</p>	<p>CBKMNEW4 Page 1168</p> <p>1 A. Because they had a market influence. 2 Q. So what were they? What was the market? 3 A. I believe -- I am not sure if they were a sell side firm. 4 They may have been. But they would send out data points to a 5 wide distribution list of their clients, and many times a stock 6 would be moving only -- whether it was true or not only because 7 JNK sent out an e-mail. 8 Q. So, to your knowledge, Mr. Adondakis at Level Global was 9 receiving them, but you at Diamondback were not? 10 A. We were -- hang on a second. At some point we were not 11 receiving e-mails, if that's what you are asking. 12 Q. There is a reason you sent this e-mail, correct? 13 A. Yes. 14 Q. You wanted the e-mails because you weren't getting -- 15 A. At that point. But I was making it clear that at some 16 point I believe we were. 17 Q. And Level Global was paying for the information? 18 A. I believe they were. 19 Q. And you asked Sam to send it to you, correct? 20 A. Yes. 21 Q. And did he? 22 A. I believe he did. 23 Q. Now, it's fair to say that you were close friends with 24 Mr. Adondakis and you worked together and you also had a 25 personal relationship, correct?</p>

<p>CBKMNEW4 Page 1169</p> <p>1 A. Mr. Weingarten, let me just say --</p> <p>2 THE COURT: Just answer the question.</p> <p>3 A. Can you repeat the question?</p> <p>4 Q. The point is, you are not sure whether or not Sam complied</p> <p>5 with your request?</p> <p>6 A. No. I am sure about that. I believe that was the case.</p> <p>7 You asked me if Level Global was paying them. I don't know. I</p> <p>8 have no insight as to whether Level Global --</p> <p>9 Q. Does JNK give out the information willy nilly?</p> <p>10 A. There is -- in the exhibit you pointed out, Sam explains</p> <p>11 how he's getting the information from JNK and apparently</p> <p>12 Chiasson had a good relationship with somebody there. I don't</p> <p>13 know.</p> <p>14 Q. But you didn't pick up the phone to JNK and say, I want to</p> <p>15 have your data points, correct?</p> <p>16 A. I did not.</p> <p>17 Q. You asked Sam Adondakis to get them for you, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, the question that followed, you had a personal and</p> <p>20 professional relationship with Mr. Adondakis, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you also were personal friends with Fayad Abbasi,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. You were also personal friends with Mr. Horvath, correct?</p>	<p>CBKMNEW4 Page 1171</p> <p>1 A. For the conferences, yes. I believe there was one time, I</p> <p>2 think it was Fayad's bachelor party where we went to Vegas</p> <p>3 other than the conferences.</p> <p>4 Q. When you would be at the conferences, did you socialize</p> <p>5 together?</p> <p>6 A. Yes.</p> <p>7 Q. How often would you socialize if you were in the city</p> <p>8 together, typically during the period when you were at</p> <p>9 Diamondback?</p> <p>10 A. In New York City?</p> <p>11 Q. Yes.</p> <p>12 A. Just Sam, Fayad and myself?</p> <p>13 Q. Yes.</p> <p>14 A. Fairly frequently.</p> <p>15 Q. I know this is a rough estimate. Once a week, twice a</p> <p>16 week, three times a week?</p> <p>17 A. Once every two, three weeks. Outside of the summers, of</p> <p>18 course, when we were sharing the house.</p> <p>19 Q. Now, I believe it was your testimony on direct examination</p> <p>20 that there came a time, I guess in the spring of 2008, where</p> <p>21 you organized an e-mail exchange amongst your friends where you</p> <p>22 exchanged data points?</p> <p>23 A. Yes.</p> <p>24 Q. And the group would have been the three gentlemen I just</p> <p>25 mentioned, you, and Danny Kuo. Would that generally be it?</p>
<p>CBKMNEW4 Page 1170</p> <p>1 A. Yes.</p> <p>2 Q. And you guys, I think you testified, on direct socialized?</p> <p>3 A. That's correct.</p> <p>4 Q. You went out to eat, correct?</p> <p>5 A. Yes.</p> <p>6 Q. You went out to clubs, correct?</p> <p>7 A. At times.</p> <p>8 Q. And did you all rent a house together a couple of summers</p> <p>9 in the Hamptons?</p> <p>10 A. Not all of us, no.</p> <p>11 Q. Which ones of the group rented the house?</p> <p>12 A. Sam, Fayad, and myself.</p> <p>13 Q. Did Horvath visit you sometimes?</p> <p>14 A. I believe he was there once, to my knowledge.</p> <p>15 Q. How many summers did you rent a house together?</p> <p>16 A. It was either two or three.</p> <p>17 Q. So at least the three of you, Mr. Abassi, Mr. Adondakis,</p> <p>18 and Jesse Tortora, rented the house together at least two</p> <p>19 summers, perhaps three?</p> <p>20 A. That's correct.</p> <p>21 Q. Did you travel together?</p> <p>22 A. Usually, we would be at the same conferences. There are</p> <p>23 probably one or two times that we did a trip outside the</p> <p>24 conference.</p> <p>25 Q. Did you ever go to Vegas together?</p>	<p>CBKMNEW4 Page 1172</p> <p>1 A. Can you just name, just to be clear?</p> <p>2 Q. Abbasi, Adondakis, you, Horvath, and Danny Kuo.</p> <p>3 A. Yes.</p> <p>4 Q. So the five of you exchanged a great deal of information by</p> <p>5 e-mail, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And in a sarcastic way did you refer to the e-mail list as</p> <p>8 the fight club?</p> <p>9 A. No, not to my recollection.</p> <p>10 THE WITNESS: The first time your Honor mentioned that</p> <p>11 was the first time I had heard that.</p> <p>12 THE COURT: First time who mentioned it?</p> <p>13 THE WITNESS: You did, your Honor. You referred to</p> <p>14 Mr. Weingarten's testimony. You mentioned that.</p> <p>15 MR. WEINGARTEN: Defense Exhibit 9002.</p> <p>16 THE COURT: But I'm not a witness, ladies and</p> <p>17 gentlemen.</p> <p>18 A. I'm sorry, Mr. Weingarten. What's --</p> <p>19 Q. 9002.</p> <p>20 THE COURT: It's not in the binder?</p> <p>21 MR. WEINGARTEN: No.</p> <p>22 Q. Mr. Tortora, are you able to identify 9002?</p> <p>23 A. Yes.</p> <p>24 Q. What is it?</p> <p>25 A. It's an e-mail from myself to the group.</p>

<p>CBKMNEW4 Page 1173</p> <p>1 Q. Date?</p> <p>2 A. March 26, 2009.</p> <p>3 MR. WEINGARTEN: Move it in.</p> <p>4 MS. APPS: No objection.</p> <p>5 THE COURT: Defense 9002 is received.</p> <p>6 (Defendant's Exhibit 9002 received in evidence)</p> <p>7 MR. WEINGARTEN: Publish.</p> <p>8 Q. Why don't we start with the e-mail at 11:06 a.m., and,</p> <p>9 again, it's from you to the group, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And what do you say?</p> <p>12 A. We are adding Jeff to e-mail list. He caved. Danny, Jeff</p> <p>13 is our close friend who worked at Pru with me, Fayad and Sam.</p> <p>14 Jeff, rule number one about e-mail list, these is no e-mail</p> <p>15 list, fight club reference. Rule number two, only data points</p> <p>16 can be sent, no sarcastic comments. Enjoy. Your performance</p> <p>17 will now go up by 100 percent in '09 and your boss will love</p> <p>18 you. Game theory, look it up.</p> <p>19 Fair to say I did not recall.</p> <p>20 Q. Did you ever see the movie?</p> <p>21 A. I did, yeah, I did.</p> <p>22 Q. There is a famous line in it, correct?</p> <p>23 A. Yes.</p> <p>24 Q. What's the famous line?</p> <p>25 A. There is no -- I guess there is no fight club.</p>	<p>CBKMNEW4 Page 1175</p> <p>1 Q. The import?</p> <p>2 A. I'm sorry?</p> <p>3 Q. When you were cooperating with the government and they</p> <p>4 asked you for wrongdoers, did you ever mention</p> <p>5 Mr. Constantino's name?</p> <p>6 A. I mentioned Mr. Constantino and I explained what role he</p> <p>7 had.</p> <p>8 Q. It's your view that whatever information Mr. Constantino</p> <p>9 received, he didn't receive enough to cause you to conclude he</p> <p>10 was engaged in any wrongdoing, correct?</p> <p>11 A. That's not my job to conclude.</p> <p>12 Q. Did he?</p> <p>13 A. Did he what?</p> <p>14 Q. Did he receive any inside information?</p> <p>15 A. Are you asking if I gave -- if I believe if I gave Jeff</p> <p>16 Constantino inside information?</p> <p>17 Q. Yes.</p> <p>18 A. As I stated, I believe I did not give Jeff Constantino the</p> <p>19 source or the level of detail that I gave others.</p> <p>20 Q. And he's a friend of yours, correct?</p> <p>21 A. He's a friend, yes.</p> <p>22 Q. You socialize with him, correct?</p> <p>23 A. Yes, at times.</p> <p>24 Q. You play hoops with him, correct?</p> <p>25 A. Yes.</p>
<p>CBKMNEW4 Page 1174</p> <p>1 Q. You are saying to the group, learn from that, there is no</p> <p>2 e-mail list, correct?</p> <p>3 A. I was joking, but that's what I was referencing. And yeah,</p> <p>4 just leave it at that.</p> <p>5 Q. Let's talk about Mr. Constantino because I guess he's on</p> <p>6 this e-mail, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And I believe the prosecutor asked you questions about</p> <p>9 Mr. Constantino.</p> <p>10 Do you remember that?</p> <p>11 A. Yes.</p> <p>12 Q. I think you said he's -- is he a consultant or is he at a</p> <p>13 hedge fund?</p> <p>14 A. He's at UBS.</p> <p>15 THE COURT: Is that where he was in 2009?</p> <p>16 THE WITNESS: That's where he was in 2009, yes. I am</p> <p>17 not sure if it was a hedge fund or mutual fund part of it.</p> <p>18 Q. There was a time when he was on that e-mail list, correct?</p> <p>19 A. Yes, very short time.</p> <p>20 Q. And you advised or you responded in questions from the</p> <p>21 prosecutor that Mr. Constantino would have no knowledge</p> <p>22 whatsoever of any wrongdoing, no knowledge whatsoever of any</p> <p>23 impropriety involving the members of this group, correct?</p> <p>24 A. I think that's a lot of words that I did not say, to my</p> <p>25 recollection.</p>	<p>CBKMNEW4 Page 1176</p> <p>1 Q. And your report to the government, when asked, is, in your</p> <p>2 view, Constantino did not receive any information that would</p> <p>3 have caused you to believe that he was engaged in wrongdoing,</p> <p>4 fair?</p> <p>5 A. Ask that one more time.</p> <p>6 Q. Did you tell the government that in your view Constantino</p> <p>7 did not receive information that would make him an inside</p> <p>8 trader?</p> <p>9 A. Again, I don't recall that language. I don't recall what I</p> <p>10 told him, but I recall what I just -- I could say what I just</p> <p>11 said.</p> <p>12 Q. In your view, did he not receive enough information to put</p> <p>13 him into jeopardy, legal jeopardy?</p> <p>14 A. Mr. Weingarten, I don't -- in my view, I did not provide --</p> <p>15 personally. I don't know what he received from anyone else --</p> <p>16 I personally didn't provide him with the same level of detail</p> <p>17 and the sources as I did the others.</p> <p>18 MR. WEINGARTEN: Defense Exhibit 5476, please.</p> <p>19 Q. Can you identify this, sir?</p> <p>20 A. An e-mail from myself to Todd of -- then I forwarded to the</p> <p>21 group, on March 26, 2009.</p> <p>22 MR. WEINGARTEN: Move it in.</p> <p>23 MS. APPS: No objection.</p> <p>24 THE COURT: Defense 5476 is received.</p> <p>25 (Defendant's Exhibit 5476 received in evidence)</p>

<p>CBKMNEW4 Page 1177</p> <p>1 MR. WEINGARTEN: Publish.</p> <p>2 Q. Just to get us together, this is a check relating to Intel,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And on 2:38 you provide this check to Mr. Newman, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Then one minute later you send it out to your crew,</p> <p>8 correct?</p> <p>9 A. To the group, yes.</p> <p>10 Q. To the group, sorry. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And on this instance, in this instance, Mr. Constantino is</p> <p>13 on e-mail, right?</p> <p>14 A. He is.</p> <p>15 Q. Let's see what is contained in the check. Consultant Intel</p> <p>16 checks, seeing strengthening in March. Thinks -- why don't you</p> <p>17 read it?</p> <p>18 A. Seeing strengthening in March. Thinks inventory</p> <p>19 restocking, definitely beat this quarter. Guess is 5 plus</p> <p>20 percent. Not as optimistic for Q2 as being cautious and</p> <p>21 calling it push out from Q4 to Q1, hopefully for recovery in</p> <p>22 back half. Q2 looking flat to slightly up. Best guess now is</p> <p>23 flat guide off higher Q1 base versus street flat off lower</p> <p>24 base, so still beat and raise.</p> <p>25 Q. Who is the consultant in this instance, sir?</p>	<p>CBKMNEW4 Page 1179</p> <p>1 A. Last checked three weeks ago and things were in line, now a</p> <p>2 big downtick. Q not firming up at all. Not going to meet</p> <p>3 plan. All brands across board trafficking to 15 percent miss.</p> <p>4 Storage and software weak, missing by 10 percent, downtick from</p> <p>5 prior when that was strong point. X86 biggest miss at 30 to 40</p> <p>6 percent.</p> <p>7 Q. Thank you. That's fine.</p> <p>8 Let's take a look at 9370. Are you able to identify</p> <p>9 that one?</p> <p>10 A. Yes.</p> <p>11 Q. What is it?</p> <p>12 A. It's an e-mail from Danny to his boss which he forwards to</p> <p>13 the group on March 26, 2009.</p> <p>14 MR. WEINGARTEN: Move it in.</p> <p>15 THE COURT: Any objection?</p> <p>16 MS. APPS: No objection.</p> <p>17 THE COURT: Defense Exhibit 9370 is received.</p> <p>18 (Defendant's Exhibit 9370 received in evidence)</p> <p>19 MR. WEINGARTEN: Publish, please.</p> <p>20 Q. Mr. Tortora, this is from Danny Kuo to his boss, Victor</p> <p>21 Dosti, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it says: IDTI checks.</p> <p>24 What company is that?</p> <p>25 A. That's a semiconductor company, Integrated Device</p>
<p>CBKMNEW4 Page 1178</p> <p>1 A. I don't recall.</p> <p>2 Q. You don't remember sitting here?</p> <p>3 A. Correct.</p> <p>4 Q. Let's take a look at 6108.</p> <p>5 Are you able to identify that, sir?</p> <p>6 A. Yes.</p> <p>7 Q. What is that?</p> <p>8 A. E-mail from myself to Todd, January 20 and March 3 and</p> <p>9 March 27 of '09, at which point I started exchanging e-mails</p> <p>10 with the group on March 27 of '09, and Fayad Abbasi responds.</p> <p>11 MR. WEINGARTEN: Move it in.</p> <p>12 MS. APPS: No objection.</p> <p>13 THE COURT: Defense Exhibit 6108 is received.</p> <p>14 (Defendant's Exhibit 6108 received in evidence)</p> <p>15 MR. WEINGARTEN: Your Honor, publish, please.</p> <p>16 Q. The top e-mail from Abbasi, it's sent to the group,</p> <p>17 including Mr. Constantino, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Let's go down to your report on March 27, 2009, at 1:10</p> <p>20 p.m. where it goes: ARW systems check.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Would you kindly read the first paragraph, please?</p> <p>24 A. All those bullet points, you mean?</p> <p>25 Q. Yes.</p>	<p>CBKMNEW4 Page 1180</p> <p>1 Technology.</p> <p>2 Q. That was one of the companies that Danny Kuo covered?</p> <p>3 A. I am not sure.</p> <p>4 Q. And this e-mail goes to Mr. Constantino, does it not?</p> <p>5 A. It does.</p> <p>6 Q. Would you read the first paragraph, please?</p> <p>7 A. March quarter revenues tracking 112 to 114 million, a miss</p> <p>8 versus consensus of 120 million. March quarter EPS zero to</p> <p>9 negative two cents. Consensus at two cents.</p> <p>10 Q. Please continue.</p> <p>11 A. Revenue miss in computing this quarter. 60 percent of</p> <p>12 sales through distribution and of that two-thirds is on a</p> <p>13 sell-in basis. Distributors are still burning through excess</p> <p>14 inventories of timing clocks, but fairly confident that they</p> <p>15 will start shipping to end demand next quarter. June quarter</p> <p>16 computing revenues up 5 to 8 percent quarter on quarter off of</p> <p>17 the 44 to 45 million number in the March quarter.</p> <p>18 Q. Thank you.</p> <p>19 Mr. Tortora, I want to ask you just a couple of</p> <p>20 questions about Mr. Goyal. Okay?</p> <p>21 A. Sure.</p> <p>22 Q. So just so I'm clear on this, you also knew him from San</p> <p>23 Francisco?</p> <p>24 A. From Prudential, yes.</p> <p>25 Q. And he actually worked for you?</p>

<p>CBKMNEW4 Page 1181</p> <p>1 A. That's correct.</p> <p>2 Q. And his name would appear on some of the reports that you</p> <p>3 authored that went out to the customers of Prudential who</p> <p>4 bought your research, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you develop a personal relationship with him?</p> <p>7 A. I developed a respect for him. I would say that it was a</p> <p>8 business relationship.</p> <p>9 Q. What year did you first meet him?</p> <p>10 A. I guess it would have been 2006.</p> <p>11 Q. So you knew him for a number of years by the time -- I</p> <p>12 guess a couple of years by the time you started working with</p> <p>13 him at Dell -- excuse me -- at Diamondback?</p> <p>14 A. One year.</p> <p>15 Q. So you came to know him at Prudential when?</p> <p>16 A. July, August '06.</p> <p>17 Q. That's fine.</p> <p>18 So he started reporting to you information about Dell,</p> <p>19 correct?</p> <p>20 A. From his friends -- are you talking at Prudential, Mr.</p> <p>21 Weingarten?</p> <p>22 Q. Yes.</p> <p>23 A. Yes, he spoke to his friends at Dell, yes.</p> <p>24 Q. He had friends at Dell because he used to work there?</p> <p>25 A. Yes.</p>	<p>CBKMNEW4 Page 1183</p> <p>1 Q. You never sat down with them. This is all through</p> <p>2 Mr. Goyal, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Did you ever ask for their names?</p> <p>5 A. No.</p> <p>6 Q. Were any of the sources of information from Mr. Goyal from</p> <p>7 investor relations?</p> <p>8 A. What do you mean by any of the sources? Are you asking did</p> <p>9 he speak to anyone in investor relations?</p> <p>10 Q. And shared it with you, any of the sources that we are</p> <p>11 referring to now.</p> <p>12 MS. APPS: Objection to form.</p> <p>13 THE COURT: As to the definition of sources, is that</p> <p>14 what you mean?</p> <p>15 MS. APPS: Yes.</p> <p>16 THE COURT: Your understanding of sources is sources</p> <p>17 of inside information or any information?</p> <p>18 THE WITNESS: Your Honor, I'm sorry. I was a bit</p> <p>19 confused by the entire questioning.</p> <p>20 Q. I'll start again.</p> <p>21 I believe on direct examination you said that</p> <p>22 Mr. Goyal provided you insights about Dell with the help of a</p> <p>23 number of sources he had inside the company, correct?</p> <p>24 A. Yes. And, again, specific when I was at Prudential?</p> <p>25 Q. I'm talking about Diamondback right now.</p>
<p>CBKMNEW4 Page 1182</p> <p>1 Q. How old a guy is Mr. Goyal?</p> <p>2 A. I don't know his age.</p> <p>3 Q. How long did he work for Dell, years?</p> <p>4 A. I don't recall. I don't recall.</p> <p>5 Q. Is it one, is it ten, is it five?</p> <p>6 A. Again, I don't think it's one and I don't think it's ten.</p> <p>7 I don't know. It may be ten.</p> <p>8 Q. Did I hear you correctly that he had as many as a half a</p> <p>9 dozen sources at Dell that was giving him information that he</p> <p>10 was sharing with you?</p> <p>11 A. I am not sure if it was half a dozen, but there were at</p> <p>12 least a few.</p> <p>13 Q. And it's fair to say that you didn't know the identity of</p> <p>14 any of them?</p> <p>15 MS. APPS: Time frame.</p> <p>16 MR. WEINGARTEN: At any point?</p> <p>17 THE COURT: This is while he was at Prudential or at</p> <p>18 any point?</p> <p>19 MR. WEINGARTEN: Prudential or Diamondback.</p> <p>20 A. By identity you mean names?</p> <p>21 Q. Yes.</p> <p>22 A. I don't believe I knew any of their names as I sit here</p> <p>23 today.</p> <p>24 Q. You never met any?</p> <p>25 A. No.</p>	<p>CBKMNEW4 Page 1184</p> <p>1 A. You're talking about Diamondback now. I'm sorry.</p> <p>2 Q. Were there different sources that Mr. Goyal had that he was</p> <p>3 reporting to you at Prudential and then at Diamondback?</p> <p>4 A. Yes.</p> <p>5 Q. Let's take it in the entirety. Both jobs. Understood?</p> <p>6 A. Okay.</p> <p>7 Q. Any of those sources where he was providing you</p> <p>8 information, you, the analyst from Dell from IR?</p> <p>9 A. He did speak to people at IR as well as friends that he had</p> <p>10 at the company.</p> <p>11 Q. Did you know the names of the people at IR?</p> <p>12 A. I knew at least one which I had mentioned prior, Shep</p> <p>13 Dunlap.</p> <p>14 Q. Now, you indicated that the art of dealing with IR</p> <p>15 sometimes involves the interpretation of body language and</p> <p>16 things of that nature.</p> <p>17 Do you recall that testimony?</p> <p>18 A. Yes, I do.</p> <p>19 Q. I just want to make sure I understand that. First of all,</p> <p>20 what do you mean by that? Why don't you start.</p> <p>21 A. So if you are speaking to someone and you try to gauge</p> <p>22 their mood, are they happy, are they sad, are they excited, are</p> <p>23 they optimistic, are they pessimistic. If you ask them a</p> <p>24 question, do they get defensive. Are they telling the truth.</p> <p>25 Q. You read into those gestures or those mood swings whether</p>

<p>CBKMNEW4 Page 1185</p> <p>1 or not the company is doing well?</p> <p>2 A. You do your best to try to interpret the tone and the body</p> <p>3 language and the commentary, yes.</p> <p>4 Q. And it's an important part of your job when you are dealing</p> <p>5 with IR, correct?</p> <p>6 A. It's an important part of my job when I'm dealing with IR,</p> <p>7 yes.</p> <p>8 Q. It's very subjective because beauty is in the eye of the</p> <p>9 beholder. One analyst can see one thing and another analyst</p> <p>10 can see another, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And expertise and experience matter, correct, in assessing</p> <p>13 what IR is saying to you, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And sometimes IR wants to send subtle messages to the</p> <p>16 analyst community, correct?</p> <p>17 A. I don't know. Who specifically are you referring to?</p> <p>18 Q. Just as a general matter. If you can't answer it, that's</p> <p>19 fine.</p> <p>20 Now, you have said that you came to believe that</p> <p>21 Mr. Goyal had one special source at Dell that was giving you</p> <p>22 inside information, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Did you believe that that person was from IR?</p> <p>25 A. No.</p>	<p>CBKMNEW4 Page 1187</p> <p>1 Was that the gist of it?</p> <p>2 A. That was the gist of it, yes.</p> <p>3 Q. So the information Sandy Goyal was providing you is that</p> <p>4 this Dell source was providing this inside information in</p> <p>5 return for chitchatting about stock, is that correct?</p> <p>6 A. That was the message I got from Sandy.</p> <p>7 MR. WEINGARTEN: If we could put up Government Exhibit</p> <p>8 202. I believe it's admitted, your Honor.</p> <p>9 THE COURT: What exhibit?</p> <p>10 MR. WEINGARTEN: 202, Government Exhibit.</p> <p>11 MS. APPS: I think it was admitted, your Honor.</p> <p>12 THE COURT: Go ahead. You can put it up.</p> <p>13 Q. Do you remember this exhibit?</p> <p>14 A. Yes.</p> <p>15 Q. Just refresh us. What are we talking about here?</p> <p>16 A. Looks like Sandy forwards me his résumé or attaches his</p> <p>17 résumé, and I tell Todd that Sandy is looking for a job.</p> <p>18 Q. So we are talking now the summer of 2008, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And Sandy Goyal had been providing you with information</p> <p>21 about Dell for a significant period of time, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And I believe in response to questions from either Mr.</p> <p>24 Fishbein or Ms. Apps you described him in an evaluation as a</p> <p>25 technical wizard, or words to that effect, correct?</p>
<p>CBKMNEW4 Page 1186</p> <p>1 Q. Now, did there come a time when Mr. Goyal asked you not to</p> <p>2 share the information he was providing to you with anyone else?</p> <p>3 A. Yes.</p> <p>4 Q. And did you agree to do that?</p> <p>5 A. I believe I said okay.</p> <p>6 Q. And you misled him, correct?</p> <p>7 A. You could say that, yes.</p> <p>8 Q. Because you in fact provided the information to your</p> <p>9 friends?</p> <p>10 A. I continued -- I had been providing it. At some point he</p> <p>11 asked me not to share it with Sam specifically, and I continued</p> <p>12 to provide it to the rest of my friends and Sam, yes.</p> <p>13 Q. Did you tell him that you would not provide it to</p> <p>14 Mr. Adondakis?</p> <p>15 A. I believe I said -- the best of my recollection, he made a</p> <p>16 comment, don't share this with Sam, and I said okay.</p> <p>17 Q. Now, in response to a question from the prosecutor, I</p> <p>18 believe, a couple of days ago, you said you were curious as to</p> <p>19 why the Dell source was providing this detailed information to</p> <p>20 Mr. Goyal, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you asked Sandy Goyal that very question, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And did I understand your answer to be because he liked to</p> <p>25 talk stocks and wanted to hear stock tips from Sandy Goyal?</p>	<p>CBKMNEW4 Page 1188</p> <p>1 A. Yes, at Prudential review, yes.</p> <p>2 Q. You thought highly of him, correct?</p> <p>3 A. I did.</p> <p>4 Q. On top of that he had all this inside information at Dell,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Did you ask your friend, Mr. Adondakis, to try to get him</p> <p>8 hired at Level Global?</p> <p>9 A. I don't recall.</p> <p>10 Q. You don't recall doing it?</p> <p>11 A. I don't recall either way.</p> <p>12 Q. Did he get a job at Level Global?</p> <p>13 A. No.</p> <p>14 Q. Did he interview at Level Global?</p> <p>15 A. I'm not aware.</p> <p>16 Q. Now, there is some testimony that Sandy Goyal was</p> <p>17 compensated for his information through his wife Ruchi Goyal,</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Did you tell Sam Adondakis that information?</p> <p>21 A. I did not.</p> <p>22 Q. You did not share that with him?</p> <p>23 A. I did not.</p> <p>24 Q. One or two more questions about Dell.</p> <p>25 MR. WEINGARTEN: Government Exhibit 237, if I may.</p>

<p>CBKMNEW4 Page 1189</p> <p>1 It's in, your Honor. 2 THE COURT: 237? 3 MR. WEINGARTEN: Yes. 4 Q. Do you remember this exhibit, sir? 5 A. Yes. 6 Q. So this is a day or two before Dell reports earnings, 7 correct? 8 A. Yes. 9 Q. In the second quarter of '08, right? 10 A. Yes. 11 Q. And this is an e-mail from you to Mr. Newman, correct? 12 A. Yes. 13 Q. And I believe it was your testimony that you were reporting 14 that Level met with Vista contact, right? 15 A. Correct. 16 Q. When you say level, you mean your friend Sam, right? 17 A. Yes. 18 Q. Vista, I believe your testimony is, is one of those expert 19 network operations? 20 A. Yes. 21 Q. Did you know who Sam's contact was at Vista? 22 A. No, not to my recollection. 23 Q. Would you read the first line? 24 A. Guy left Dell one month ago, did HDD procurement there. 25 Q. Just so we are together on this, this is someone who you</p>	<p>CBKMNEW4 Page 1191</p> <p>1 Q. Thank you. 2 MR. WEINGARTEN: If we could put up Government Exhibit 3 274. I don't think this one is in. 4 THE COURT: Don't put it up then. You don't think it 5 is? 6 MR. WEINGARTEN: I don't think. 7 THE COURT: Can you tell if it is in? 8 MS. APPS: I don't think it is. 9 THE COURT: If you plan on offering it, then lay a 10 foundation. 11 Q. Do you see it, sir? 12 A. Yes. 13 Q. Can you identify it? 14 A. An e-mail from myself to Todd which I forwarded to the 15 group, February 4, '09. 16 MR. WEINGARTEN: Move it in. 17 MS. APPS: No objection. 18 THE COURT: Government Exhibit 274 is received. 19 (Government's Exhibit 274 received in evidence) 20 Q. Start at the very top. This is February 4, 2009, at 10:22 21 a.m. 22 You're sending this check out to your friends, right? 23 A. Yes. 24 Q. One minute before you're sharing it with your boss, right? 25 A. Yes.</p>
<p>CBKMNEW4 Page 1190</p> <p>1 are learning from Sam used to work at Dell, right? 2 A. It says, yes, exactly that, used to work at Dell. 3 Q. If this e-mail is to be believed, he is no longer there, 4 right? 5 A. That's correct. 6 Q. Please keep reading. 7 A. Been good last couple quarters on drives, but also on Dell, 8 parenthesis, positive last quarter confirming other checks. 9 Continue? 10 Q. Yes, please. 11 A. Even though left, still talks to people there. Message he 12 got was that barely made rev targets by selling low margin 13 business end of quarter. 14 Q. One more line. 15 A. Missed all of internal margin targets. 16 Q. So in this e-mail, a day or two before reported earnings, 17 this guy who used to work at Dell is providing information 18 about margin targets, correct? 19 A. Yes. 20 Q. And he is reporting that Dell is going to miss all of its 21 internal margin labels or margin targets, correct? 22 A. Yes. 23 Q. And this is, of course -- this is right before the report, 24 right? 25 A. Yes.</p>	<p>CBKMNEW4 Page 1192</p> <p>1 Q. And it's a call with a new Dell contact? 2 A. Yes. 3 Q. Do you remember who the contact was? 4 A. No, I do not. 5 Q. It's fair to say that you had many, many Dell contacts, 6 correct? 7 A. How do you define many, many? 8 Q. How many did you have? 9 A. How many people did I speak to at Dell? 10 Q. How many people -- do we know if this is a person that you 11 spoke to at Dell or this was a person speaking to you about 12 Dell? 13 A. I don't recall who this is. 14 Q. Read the first paragraph, if you would. 15 A. Call with new Dell contact. Will be good, has read into 16 overall units. January Q held up relatively okay for consumer, 17 parenthesis, made 95 percent of plan, but was a disaster for 18 commercial, parenthesis, 80 percent to plan. 19 Q. To save time, could you just read quickly to yourself and 20 then summarize what you are saying here? 21 A. You want me to read the entire e-mail? 22 Q. Yes. 23 A. Okay. 24 Q. Let me help a little. Is it fair to say it's not a good 25 report?</p>

<p>CBKMNEW4 Page 1193</p> <p>1 A. I know you want to save time, but I don't recall this. 2 Q. Okay. 3 A. Yes, that's fair. 4 Q. And just specifically, right in the middle, ASP has been 5 stable this Q in commercial and consumer. And ASP is average 6 sales price? 7 A. Average selling price. 8 Q. That's a reasonably important metric? 9 A. Yes. 10 Q. Not giving deals, no elasticity. And what does the next 11 sentence say? 12 A. April quarter not looking good. 13 Q. Fair enough. And then the last line or the first line of 14 the second to last paragraph: My read is that this is a 15 disaster on the top line. 16 That's earnings or revenues? 17 A. Yes. 18 Q. The bottom, very negative for Dell, correct? 19 A. Yes. 20 Q. So it's fair to say that this was a significantly negative 21 report about Dell with facts and figures to support it, right? 22 A. I don't know if they were facts. They were figures. 23 Q. There came a time, as you've testified, where you ceased to 24 work for Diamondback, correct? 25 A. Yes.</p>	<p>CBKMNEW4 Tortora - redirect Page 1195</p> <p>1 MS. APPS: If we could put that on the screen. 2 Q. Do you recall being asked questions about this chart in 3 July of 2008? I don't know if you can see that there. 4 MS. APPS: One second, your Honor. I am going to 5 switch the charts. 6 Q. Do you recall being asked questions about this chart that 7 shows trades in July of 2008? Do you see that? 8 A. Yes. 9 Q. What trades does that show on that chart? 10 A. This shows that on July 24, Todd had executed a series of 11 buy to covers, which means he closed out his short position 12 throughout the day. Then it also shows a short sale on 13 8/5/2008. 14 Q. Mr. Fishbein asked you about this trading in connection 15 with another exhibit, Government Exhibit 206. 16 Do you see, Mr. Tortora, Government Exhibit 206 on the 17 screen there? 18 A. Yes, I do. 19 Q. And whose information is contained in this e-mail? 20 A. This is information from Sandy Goyal. 21 Q. And Mr. Fishbein asked you about the information that was 22 contained in this e-mail. Do you recall those questions? 23 And in this e-mail you write: GM could be an issue. 24 Will know more in two weeks. 25 Do you see that?</p>
<p>CBKMNEW4 Page 1194</p> <p>1 Q. And you sought employment in the hedge fund industry? 2 A. In the financial industry, not just hedge funds. 3 Q. And on that occasion did you go to your friend Sam for 4 help? 5 A. I don't recall specifically Sam, but I reached out to my 6 friends, so it wouldn't surprise me. 7 Q. Did you ask your friend Sam to get Anthony Chiasson to 8 provide you with a recommendation? 9 A. I don't recall. 10 Q. Isn't it true that you did and in fact Mr. Chiasson refused 11 to do so? 12 A. I have no recollection of that. 13 Q. No recollection of that? 14 A. None. 15 MR. WEINGARTEN: Thank you, your Honor. I have 16 nothing further. 17 THE COURT: Redirect examination. 18 MS. APPS: Yes, your Honor. 19 REDIRECT EXAMINATION 20 BY MS. APPS: 21 Q. Mr. Tortora, I want to start with some questions that Mr. 22 Fishbein asked you and some documents that he showed you about 23 trading from August of 2008 and July of 2008. 24 Now, Mr. Fishbein started by showing you a chart from 25 July of 2008.</p>	<p>CBKMNEW4 Tortora - redirect Page 1196</p> <p>1 A. Yes. 2 Q. What did you mean by that? 3 A. I meant we had been hearing that gross margin could miss, 4 but we won't know for sure until we get the roll-up, which was 5 approximately two weeks. That's when we would get another 6 update from Sandy's contact. 7 Q. No more than two weeks refers to an update from Mr. Goyal's 8 contact, is that correct? 9 A. Yes. 10 Q. And Mr. Fishbein then -- first of all, look at the date 11 there, July 24 at 3:24 p.m. 12 Do you see that? 13 A. Yes. 14 Q. And Mr. Fishbein then directed you to the chart that I just 15 showed you. 16 MS. APPS: If you could put that up again, 17 Mr. Hoffman. 18 Q. He asked you if there were any trades after 3:24 p.m. on 19 July 24. 20 Are there any trades? 21 A. Yes. 22 Q. After 3:24? 23 A. On July 24 specifically? 24 Q. Exactly. 25 A. No, there is not.</p>

<p>CBKMNEW4 Tortora - redirect Page 1197</p> <p>1 Q. The next chart that Mr. Fishbein showed you was a chart for 2 trading between August 8, 2008 and August 14, 2008. 3 Do you recall being asked about that chart, 4 Mr. Tortora? 5 A. Yes. 6 Q. Now, the last trade on the chart before was August 5. 7 MS. APPS: You can put both of those charts together. 8 Q. After the July 24 trade, the next trade is on August 5. 9 Do you see that? 10 A. Yes. 11 Q. Mr. Fishbein didn't ask you about that trade. 12 Do you recall that, Mr. Tortora? 13 A. Yes. 14 Q. And the next trade on the chart that starts below is August 15 8. 16 Do you see that? 17 A. Yes. 18 Q. Do you recall that Mr. Fishbein did not show you the trades 19 between August 5 and August 8 on your cross-examination? 20 A. I don't recall seeing a chart for those dates. 21 Q. What's the share balance, the ending share balance on the 22 top chart there? 23 A. It's a short position of negative -- of 20,000 shares. 24 Q. What is the first share balance on the second chart on the 25 screen?</p>	<p>CBKFNEW5 Tortora - redirect Page 1199</p> <p>1 Q. And when was that in relation to the e-mail we just saw in 2 Government Exhibit 214? 3 A. It's on the same day one minute later. 4 Q. And if you look back at Government Exhibit 215, the instant 5 message, first of all, what does the "Dell from Sandy" mean? 6 What did you understand that to mean when Mr. Newman wrote it? 7 A. The e-mail that I sent him, the exhibit we were just 8 referencing is that e-mail from Sandy, that information. 9 Q. You say, "Y on with him now," what does that mean? 10 A. Yes I'm on the phone with him now. 11 Q. And what is Mr. Newman's response? 12 A. "Cool thank you." 13 Q. When you got the information that's in Government Exhibit 14 214, the revenue and the gross margin information from 15 Mr. Goyal, was it public or non-public? 16 A. Non-public. 17 Q. Did you understand when you got that information that it 18 was wrong to trade on it? 19 A. Yes. Absolutely. 20 Q. I'm going to go back to the trading, Mr. Tortora. I'd like 21 you to look at the trades between August 5 and August 8 that 22 Mr. Fishbein did not show you. Those are on the screen. Do 23 you see that? 24 A. Yes. 25 Q. And let's talk about what Mr. Newman did on August 5th.</p>
<p>CBKMNEW4 Tortora - redirect Page 1198</p> <p>1 A. Short position of 330,000 shares. 2 Q. Now, Mr. Tortora, could you take a look at Government 3 Exhibit 214. I think we are going to put it on the screen. 4 Mr. Tortora, if you could look at the second and third 5 bullet points: Rev could be slightly above 16 billion and 6 below that it talks about GM looking at 17.5 percent. 7 Do you see that? 8 A. Yes. 9 Q. Where did that information come from? 10 A. Sandy Goyal. 11 Q. And just to be clear, what is the date of this e-mail? 12 A. August 5, 2008. 13 Q. And do you recall that there was an instant message the 14 same day? 15 MS. APPS: Mr. Hoffman, if you could put up Government 16 Exhibit 215. 17 Q. There is a line on this instant message from Mr. Newman 18 that says: The Dell from Sandy. 19 Do you see that? 20 A. Yes. 21 Q. What time and what date did Mr. Newman write the Dell from 22 Sandy? 23 A. August 5, 2008, 8:40 a.m. 24 (Continued on next page) 25</p>	<p>CBKFNEW5 Tortora - redirect Page 1200</p> <p>1 Can you describe the trades that he made on August 5th? 2 A. Starting at 9:39 a.m., concluding at 3:29 p.m., he executes 3 a series of short sales on Dell totaling 180,000 share balance. 4 Q. Now, the first trade is 9:39 a.m. Do you see that? 5 A. Yes. 6 Q. When does the market open? 7 A. 9:30 a.m. 8 Q. And, Mr. Tortora, what was the time on the exhibit GX 214 9 that we just looked at? Do you happen to have that there? 10 A. I don't have it in front of me, so just to get the exact 11 time. 8:39 a.m. 12 Q. So 9:39 a.m., approximately an hour later but nine minutes 13 after the market opened, is that right? 14 A. That's correct. 15 Q. And what was the total number of shares that Mr. Newman 16 shorted on August 5, 2008? 17 A. 180,000. 18 Q. And what did he do between August 5, 2008 and August 8, 19 2008 that's on the chart on the screen that Mr. Fishbein did 20 not show you? 21 A. He continues to short more. 22 Q. Mr. Tortora, I want to ask you about another series of 23 records that Mr. Fishbein showed you. Let's start with 24 Government Exhibit 223. Do you recall being asked about this 25 series of e-mails?</p>

<p>CBKFNEW5 Tortora - redirec Page 1201</p> <p>1 A. Yes.</p> <p>2 Q. And when asked about this, Mr. Fishbein asked that it would</p> <p>3 appear from this exhibit that you had asked Mr. Goyal for</p> <p>4 lunch. Do you recall being asked that question?</p> <p>5 A. Yes.</p> <p>6 Q. And further in the questioning Mr. Fishbein asked you,</p> <p>7 excuse me, Mr. Fishbein stated that you had asked Mr. Goyal</p> <p>8 rather than him asking you. Do you recall Mr. Fishbein asking</p> <p>9 you about that?</p> <p>10 A. Yes.</p> <p>11 Q. And I believe you responded something to the effect of</p> <p>12 Mr. Goyal may in fact have called you earlier that day, you</p> <p>13 weren't sure.</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall that testimony?</p> <p>16 A. Yes.</p> <p>17 Q. Now, earlier in the cross-examination before Mr. Fishbein</p> <p>18 asked you about this exhibit he had shown you some telephone</p> <p>19 records. Do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. Was it the first time you saw these telephone records since</p> <p>22 being approached by the FBI, was that on the witness stand a</p> <p>23 few days ago?</p> <p>24 A. Yes.</p> <p>25 Q. Now, Mr. Fishbein didn't show you -- withdrawn. Just to be</p>	<p>CBKFNEW5 Tortora - redirec Page 1203</p> <p>1 A. Yes.</p> <p>2 Q. Do you see that's a telephone, it lists a telephone number</p> <p>3 of 212-476-9000 and it's calling a number 415-596-4020. Do you</p> <p>4 see that?</p> <p>5 A. Yes.</p> <p>6 MS. APPS: Just for the record, your Honor, the</p> <p>7 parties have stipulated that the first number, 212-476-9000 is</p> <p>8 the main number for Neuberger Berman.</p> <p>9 Q. Mr. Tortora, where did Mr. Goyal work?</p> <p>10 A. At Neuberger Berman.</p> <p>11 Q. And the other number on this phone record, 212 -- excuse</p> <p>12 me, withdrawn. The other number on this entry in the phone</p> <p>13 records, 415-596-4020, whose telephone number is that?</p> <p>14 A. That's my cell phone number.</p> <p>15 Q. Did Mr. Goyal have your cell phone number?</p> <p>16 A. Yes.</p> <p>17 Q. So does this record here refresh your recollection about</p> <p>18 whether Mr. Goyal in fact called you at 8:49 a.m. on August 15,</p> <p>19 2008?</p> <p>20 A. Ms. Apps, I remember that Sandy had asked me to have lunch</p> <p>21 that day and there was something he wanted to talk to me about.</p> <p>22 And as I mentioned prior, I said he may have called me.</p> <p>23 Q. Now, in cross-examination Mr. Fishbein asked you about</p> <p>24 trading on August 15, 2008.</p> <p>25 MS. APPS: Mr. Hoffman, if you could put up the trades</p>
<p>CBKFNEW5 Tortora - redirec Page 1202</p> <p>1 clear, the phone records you looked at, those were your cell</p> <p>2 phone records?</p> <p>3 A. Yes.</p> <p>4 Q. On the witness stand I'm talking about.</p> <p>5 A. Yes.</p> <p>6 Q. Now, when Mr. Fishbein showed you Government Exhibit 223</p> <p>7 and you told him that Mr. Goyal may have called you earlier</p> <p>8 that day, do you recall whether Mr. Fishbein showed you any of</p> <p>9 your cell phone records during that part of the testimony?</p> <p>10 MR. FISHBEIN: Objection, your Honor. This is getting</p> <p>11 argumentative. She can show him records she wants.</p> <p>12 THE COURT: I'll allow it. Do you have a</p> <p>13 recollection?</p> <p>14 THE WITNESS: I do not remember seeing those phone</p> <p>15 records, your Honor.</p> <p>16 Q. I'm going to show you an excerpt from the phone records.</p> <p>17 There's a stipulation between the parties as to these phone</p> <p>18 records coming into evidence and I'm just showing an excerpt</p> <p>19 and just for clarification of the record, I've marked it as</p> <p>20 Government Exhibit 2606A. If I may approach the witness, your</p> <p>21 Honor.</p> <p>22 THE COURT: You may.</p> <p>23 Q. This is in evidence. Now, Mr. Tortora, I want to direct</p> <p>24 your attention to line 1131 on August 15, 2008. Do you see</p> <p>25 that?</p>	<p>CBKFNEW5 Tortora - redirec Page 1204</p> <p>1 for August 15, 2008.</p> <p>2 Q. And Mr. Fishbein asked you whether or not the trading that</p> <p>3 day on August 15, 2008 began before or after you had lunch with</p> <p>4 Mr. Goyal. Do you recall those questions?</p> <p>5 A. Yes.</p> <p>6 Q. And just for your reference, Mr. Tortora, if you look on</p> <p>7 Government Exhibit 223, if you recall, it talks about you have</p> <p>8 a late lunch there. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay, so coming back to the trading records, Mr. Tortora,</p> <p>11 Mr. Fishbein asked you what trades happened after lunch. Do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall what his question was? Now, can you identify</p> <p>15 any trades on August 15 that happened after your 8:49 a.m. call</p> <p>16 with Mr. Tortora?</p> <p>17 A. With Mr. --</p> <p>18 MR. FISHBEIN: Objection.</p> <p>19 Q. Excuse me, call with Mr. Goyal.</p> <p>20 MR. FISHBEIN: Objection. I don't think that's</p> <p>21 correct.</p> <p>22 THE COURT: I'll allow it.</p> <p>23 A. Ms. Apps, all of the trades on this day would have occurred</p> <p>24 after that call.</p> <p>25 Q. Now, if you look, if you could come again to look at the</p>

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1	phone records that's Exhibit 2606-A. And if you look to the		1	time?	
2	next page, and if you see there's some items on line 1148.		2	A. 300 percent.	
3	A. Yes.		3	Q. Now I want to take a step back for a moment to -- just one	
4	Q. And there's an entry at 1:54 p.m. between the number which		4	moment, your Honor. I want to step back to the day before.	
5	is your cell phone ending in 4020, do you see that?		5	We've been talking about August 15. If you could take a look	
6	A. Yes.		6	at Government Exhibit 222. What is the date on that e-mail?	
7	Q. And it's with a number 415-216-6961. Do you see that?		7	A. August 14, 2008.	
8	A. Yes.		8	MS. APPS: Mr. Hoffman, if you could blow that up. Do	
9	Q. And the parties have stipulated that that number,		9	the top three e-mails.	
10	415-216-6961 is one of Sandy Goyal's phone numbers. And		10	Q. And do you see that, Mr. Tortora, at 3:31 p.m. you tell Mr.	
11	there's another series of calls shortly after that at line 1150		11	Newman, "Trying to get Dell read tonight." Do you see that?	
12	and line 1151 between the same two numbers. Do you see that?		12	A. Yes.	
13	A. Yes.		13	Q. What did you mean by that?	
14	Q. And again, what time are those calls?		14	A. I was going to talk to Sandy to see if he can get an update	
15	A. 2:05 p.m.		15	from his contact.	
16	Q. And how long are they?		16	Q. And what is Mr. Newman's response?	
17	A. Looks like mere seconds.		17	MR. FISHBEIN: Your Honor, I object. This was not the	
18	Q. So looking at those records, what do you think is happening		18	subject of cross. We didn't discuss this e-mail at all.	
19	on that day?		19	THE COURT: Overruled. I'll allow it.	
20	A. I have a recollection of trying to -- if you look back at		20	A. He says, "Great. This one primed if data the same."	
21	the e-mail it's like we were trying to meet up somewhere on		21	Q. And I want to show you, again, the parties stipulated about	
22	Third, and Sandy and I were outside and he and I were calling		22	the phone records. This is another excerpt from the phone	
23	each other to figure out exactly what block to meet up on,		23	records. Showing you what's in evidence as Government Exhibit	
24	where each other was.		24	2607-A. Mr. Tortora, have you ever seen this document before?	
25	Q. And if you look at the line -- so after the exchange of		25	A. No, I have not.	
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1	phone numbers between your cell phone number and Mr. Goyal's		1	Q. Now, I want to ask you about a number, I want to ask you	
2	cell phone number, do you see that the next completed call is		2	about an entry on -- withdrawn.	
3	line 1153 with a call at 3:10 p.m. Do you see that?		3	MS. APPS: For the record, your Honor, the parties	
4	A. Yes.		4	have also stipulated that these particular phone records which	
5	Q. And what telephone number is it that you call at that time?		5	belong to, these particular phone records which belong to	
6	A. Do you want me to read the number?		6	Mr. Goyal, I should say the number that is Mr. Goyal's is	
7	Q. Could you read the number into the record?		7	415-738-2210, that's what the parties have stipulated. In	
8	A. Sure. It's 617-817-1138.		8	addition with respect to these telephone records, they're	
9	MS. APPS: And the parties have stipulated, your		9	actually in Greenwich mean time.	
10	Honor, that that number, 617-817-1138 is Mr. Newman's phone		10	Q. Mr. Tortora, can you look at the entry that's highlighted	
11	number.		11	there and just read what it says? From what number it says?	
12	Q. Now, did Mr. Fishbein show you those call records when he		12	A. Yes. 813-380-4010.	
13	was asking you about Government Exhibit 223?		13	Q. And again, the parties have stipulated that that telephone	
14	A. No, he did not.		14	number belongs to a man by the name of Rob Ray. Have you ever	
15	Q. Now, Mr. Hoffman, if you could put up the trading records		15	heard that name before?	
16	for August 15 again. So now that you've looked at your phone		16	A. No, I have not.	
17	records, Mr. Tortora, when did Mr. Newman start trading in Dell		17	Q. And this indicates, is it fair to say that this indicates a	
18	stock in relation to the call that you had with Mr. Newman at		18	telephone call of 49 minutes in length and change between the	
19	3:10 p.m.?		19	two numbers that I've just identified on August 15 at 2:13 a.m.	
20	A. He began shorting more Dell three minutes after I spoke		20	Greenwich mean time? Do you see that?	
21	with him.		21	A. Yes, I do.	
22	Q. And how many short shares did he short after 3:31, excuse		22	Q. And that is 10:30 p.m. on eastern standard time?	
23	me, after 3:13 p.m., if you can add that up.		23	THE COURT: Well, that's a question. Do you know what	
24	A. 300,000 shares. Short.		24	Greenwich mean time is relative to eastern standard time?	
25	Q. How big of an increase was that in his position at the		25	THE WITNESS: I do not, your Honor.	

CBKFNEW5	Tortora - redirec	Page 1209	CBKFNEW5	Tortora - redirec	Page 1211
1	Q. And the very next day, Mr. Tortora, you spoke to Mr.		1	consumer laptops. You have to estimate how many of each of	
2	Tortora at 8:49 a.m. Do you recall seeing that telephone		2	those models they'll sell. You can do it in terms of	
3	record a few moments ago?		3	percentage, maybe they'll sell one model A that makes it	
4	A. Yes.		4	10 percent of those overall sales, maybe model B makes up	
5	Q. And later that same day, on August 15, you had lunch with		5	20 percent or you can do it in terms of units. You also have	
6	Mr. Goyal, is that right?		6	to estimate the prices and how they're going to change. You	
7	A. That's right.		7	also have to estimate the cost, what type of hard drive goes in	
8	Q. And we just saw the trading records showing that Mr. Newman		8	there what type of microprocessor, graphic processor, what goes	
9	shorted 350,000 shares of Dell stock the day that you met		9	in there. And that's just a small piece of Dell's overall	
10	Mr. Goyal for lunch.		10	products, that's an example.	
11	THE COURT: Is that a question?		11	Q. You also testified that when you were at Diamondback for a	
12	Q. Do you see that there?		12	certain period of time you received specific numbers from Sandy	
13	A. Yes.		13	Goyal that he had gotten from his contact at Dell relating to	
14	Q. Mr. Tortora, you were asked a number of questions on		14	earnings. Do you recall that testimony?	
15	cross-examination about financial models. Do you recall some		15	A. Yes.	
16	of those questions?		16	Q. Now, when you got the information from Mr. Goyal as to what	
17	A. Yes.		17	the revenue would be in Dell's earnings announcement before it	
18	Q. And you were asked about the kind of modeling you did at		18	was announced to the public, did you have to make any	
19	Prudential and you talked about a bottoms up model.		19	assumptions?	
20	A. Yes.		20	A. Zero assumptions.	
21	Q. Do you recall that testimony? What is a bottoms up model?		21	Q. And why is that?	
22	A. A bottoms up model is when you try to take all the parts of		22	A. Because he gave us the answer.	
23	a company to create the whole. One example would be looking at		23	Q. When you got the revenue number from Sandy Goyal did you	
24	a company like Dell, for instance, looking at all their		24	need any kind of model to figure out the revenue?	
25	different PC lines; notebook, laptop, consumer notebook,		25	A. No.	
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1	consumer laptop, commercial laptop, commercial desktop, server,		1	Q. And what about gross margins? When you got the information	
2	storage, etc. estimating all of their units for all of these		2	from Mr. Goyal about gross margins while you were at	
3	different, or all the unit sales for all these different		3	Diamondback did you need any kind of model to assist you in	
4	businesses, the average selling price for all these different		4	determining the gross margins?	
5	businesses, and taking all those parts at the lowest level of		5	A. No.	
6	granularity and trying to come up with a total revenue number.		6	Q. Why not?	
7	The same thing would be done for gross margin. For		7	A. Because he gave us the answer.	
8	all the products you have all the different unit sales and all		8	Q. Now, if you're doing a kind of bottoms up modeling that you	
9	the different selling prices and then you have to layer in all		9	talked about that you did at Prudential, would that kind of	
10	the different costs, how much it costs to make, how much each		10	model need to be changed based on a rollup of numbers?	
11	component costs, hard drive, microprocessor, etc., so you go		11	MR. FISHBEIN: Objection to form.	
12	from the bottoms up, to take all the parts at the most granular		12	THE COURT: Leading? Is that your -- I'll allow it.	
13	level detail to try to come up with a final answer on the		13	You can answer the question if you can answer the question.	
14	income statement in terms of revenue, gross margin, earnings		14	A. Yes, your Honor. The rollup, Ms. Apps, is Dell in that	
15	per share, etc.		15	case doing their own internal bottoms up model with actual	
16	Q. When you built that kind of model when you were at		16	results. They're taking all their different product segments,	
17	Prudential, did you have to make assumptions in order to try to		17	all of their different business units, all their different	
18	come up with some kind of estimate for revenue?		18	geographies, average selling price, the units, they're rolling	
19	A. The vast, vast, vast majority was assumptions because it's		19	it up internally and they're coming up with the final number.	
20	such a granular level of detail, there's so many variables		20	So to answer your question, no, when we got those final rolled	
21	needed.		21	up numbers, that was it. That was the answer.	
22	Q. Could you just explain what kind of assumptions you had to		22	Q. Now, Mr. Fishbein showed you some exhibits with the word	
23	make or give some examples of some of those assumptions?		23	"model" in it that you used when some of Sandy Goyal's	
24	A. Sure. For instance, let's just take one of Dell's product		24	information was passed to you. I want to show you Government	
25	lines, consumer laptops. Let's say they sell seven models of		25	Exhibit 257.	

CBKFNEW5	Tortora - redirec	Page 1213	CBKFNEW5	Tortora - redirec	Page 1215
1	MS. APPS: And, Mr. Hoffman, if you could just		1	bottom of the first page that has 3876 next to it? Do you see	
2	highlight the bottom part of that e-mail. On November 14, 2008		2	that?	
3	at 11:43 you sent an e-mail to Mr. Newman with the subject line		3	A. Yes.	
4	Dell and you see there it says "ran model" and then it has some		4	Q. And again there's a call between a number 415-216-6961 and	
5	numbers. Do you see that?		5	the parties have stipulated that this is Mr. Goyal's number.	
6	A. Yes.		6	And then there is the second number there ending in 4020.	
7	Q. What were you doing when you say ran model in that sentence		7	Whose number is that?	
8	there?		8	A. That's mine.	
9	A. So we take the answers that Sandy gave us for revenue and		9	Q. And what is the time of this call?	
10	for margin and simply putting it into an income statement and		10	A. 8:31 a.m.	
11	calculating earnings per share. So revenue and margin, the		11	Q. And again the date?	
12	only additional calculations that needed to be made to get to		12	A. 11/14/08.	
13	earnings per share as I mentioned on the first day is tax rate		13	Q. If you turn to the next page of this phone record, the	
14	and share count.		14	entry at the top next to the number 3877. What time is that	
15	Q. When you talked to Mr. Newman about Mr. Goyal's		15	and what date is that?	
16	information, did you ever talk about modeling with him, do you		16	A. 8:38 a.m. on the same day, November 14, 2008.	
17	remember?		17	Q. And the first number ending in 4020, whose telephone number	
18	A. I don't recall ever speaking to Todd about modeling.		18	is that?	
19	Q. When you provided Goyal's information to Mr. Newman, what		19	A. That's mine.	
20	did you tell him?		20	Q. And the next number, the parties have stipulated that the	
21	A. I told him exactly what Sandy was telling me, exactly what		21	next number is the number of Todd Newman, 617-817-1138. How	
22	the information was and then the only commentary on modeling		22	long was that call that day?	
23	would be, such as this. If you plug Sandy's numbers into a		23	A. Five minutes and 57 seconds.	
24	model, looks like they could get to X, whatever the number was		24	Q. If you look further down there's another number	
25	in terms of earnings per share.		25	highlighted, 3885 on November 14 at 9:45 a.m. And it's from	
CBKFNEW5	Tortora - redirec	Page 1214	CBKFNEW5	Tortora - redirec	Page 1216
1	Q. In the conversations you had with Mr. Newman when were you		1	your cell phone number, 4020, to the telephone number	
2	passing on Sandy Goyal's information, was there anything that		2	212-287-5382. The parties have stipulated that that is the	
3	you said that could have led Mr. Newman to believe that you		3	number for Sam Adonakis at Level Global. Do you see that	
4	were doing the kind of bottoms up modeling you did at		4	number?	
5	Prudential?		5	A. Yes.	
6	MR. FISHBEIN: Objection to what Mr. Newman believed.		6	Q. How long was that call?	
7	THE COURT: Sustained.		7	A. Four minutes and 47 seconds.	
8	Q. In this e-mail, Mr. Tortora, what information is coming		8	Q. Again, if you could come back to Government Exhibit 257.	
9	from Sandy Goyal?		9	After you send the e-mail to Mr. Newman that we looked at a few	
10	A. The revenue of 15.15 and the operating margin which is of		10	moments ago at 11:43 a.m., there's another exchange, Mr. Newman	
11	course inclusive of gross margin of 6.1 percent, and the EPS		11	responds "TY." What does TY mean?	
12	would be the simple calculation.		12	A. Thank you.	
13	Q. And I want to show you again what's in evidence, that's an		13	Q. And you send another e-mail from Level on Dell at the top	
14	excerpt from cell phone records, it's marked as 2606-B.		14	of that. Do you see that?	
15	THE COURT: But the entire exhibit is in evidence?		15	A. Yes.	
16	MS. APPS: The entire exhibit is in evidence.		16	Q. When you use the word "level" in e-mails such as this one,	
17	THE COURT: So are you offering 2606-B or you're just		17	whom are you referring to?	
18	using it to illustrate what's already in evidence as 2606?		18	A. Sam Adonakis.	
19	MS. APPS: I'll offer it, your Honor, it's technically		19	Q. Now, you mentioned that you started to do some modeling in	
20	in evidence, but it just makes it clearer with a particular		20	2010 while you were working at Diamondback?	
21	number, so I'll offer it.		21	A. Yes.	
22	THE COURT: Any objection?		22	Q. What kind of modeling was that?	
23	MR. FISHBEIN: No objection.		23	A. It was modeling using publicly available sources to try to	
24	THE COURT: So Government Exhibit 2606-B is received.		24	determine stock prices. I would look at historical data and	
25	Q. Mr. Tortora, could you take a look at the line on the		25	try to determine the impact that had in the past, that	

CBKFNEW5	Tortora - redirec	Page 1217	CBKFNEW5	Tortora - redirec	Page 1219
1	particular data had in the past on stock prices and then I		1	THE COURT: While we're doing that, I'm the one in the	
2	looked at current data and tried to predict if it would have		2	robe, I find it a little warm in here, but Mr. Feith doesn't.	
3	the same impact as it had in the past. Examples could be		3	How do you find it? Comfortable, too warm, too hot?	
4	factory utilization, inventory. These were, this is		4	Comfortable. Anybody find it too hot? No one.	
5	information I would get from company financial statements.		5	MR. FISHBEIN: Your Honor?	
6	Q. And why did you start doing that kind of modeling in 2010?		6	THE COURT: You find it too hot?	
7	A. Well, as I mentioned post Galleon it became difficult to		7	MR. FISHBEIN: I have a different issue of being	
8	get information. Our relationship with Todd had deteriorated.		8	uncomfortable. Could I have two minutes?	
9	I was unable to provide him information up to the level that I		9	THE COURT: All right. Let's take an afternoon break.	
10	had and I began to revert back to things I had done at		10	MR. FISHBEIN: Thank you.	
11	Prudential, my days at Prudential, research based on publicly		11	THE COURT: I'll leave the temperature alone but you	
12	available information, bottoms up type modeling.		12	can get a cold drink or a hot drink if you like.	
13	Q. And what was Mr. Newman's response to what you said to him		13	(Jury excused)	
14	around this financial modeling around 2010?		14	(Recess)	
15	MR. FISHBEIN: Objection. Could we have a particular		15	oOo	
16	example, time, date or anything?		16	THE COURT: All right, have a seat. We'll now resume	
17	MS. APPS: We're talking about the period when he		17	with the redirect examination of Mr. Tortora by Ms. Apps.	
18	started to do this in and around 2010. You sent models to Mr.		18	BY MS. APPS:	
19	Newman.		19	Q. You have in front of you, Mr. Tortora, what's been marked	
20	THE COURT: Could you be a little more specific about		20	for identification as Government Exhibit 2252.	
21	when in 2010, Mr. Tortora?		21	A. Yes.	
22	THE WITNESS: Your Honor, I was only there for the		22	Q. Do you see that?	
23	first four months, I can't give a specific month but I remember		23	A. Yes.	
24	doing several analyses I conducted over those months.		24	Q. Do you recognize what that is?	
25	THE COURT: All right.		25	A. Yes.	
CBKFNEW5	Tortora - redirec	Page 1218	CBKFNEW5	Tortora - redirec	Page 1220
1	Q. What was Mr. Newman's response when you sent him those		1	Q. What is it?	
2	models?		2	A. Diamondback's compliance manual.	
3	A. His response was either nothing or showed very little		3	MS. APPS: The government offers 2252.	
4	interest or even some negative commentary response.		4	MR. FISHBEIN: Your Honor, I object with this witness.	
5	Q. Now, Mr. Fishbein also asked you a series of questions		5	I think it's his understanding that's relevant, in other words,	
6	about what you were supposed to do as an analyst at Diamondback		6	his understanding of the policy. I'm not sure the policy	
7	and he showed you your performance evaluation from 2007. Do		7	itself at this point is relevant.	
8	you recall those questions?		8	MS. APPS: Your Honor, this came up in respect to a	
9	A. Yes, I do.		9	series of questions that Mr. Fishbein asked about what	
10	Q. And there was something in those performance evaluations		10	Diamondback's --	
11	that talked about maintaining positive relationships with sell		11	THE COURT: The objection is overruled. I'll allow	
12	side people and with industry contacts. Do you recall that?		12	it. Government Exhibit 2252 is received.	
13	A. Yes.		13	(Government's Exhibit 2252 received in evidence)	
14	Q. And Mr. Newman suggested that because it was in the --		14	Q. Mr. Tortora, if you could turn to the page that's marked	
15	THE COURT: Mr. Fishbein.		15	G-2 at the bottom. Look at the heading C, communicating with	
16	Q. Sorry. Thank you, your Honor. Mr. Fishbein suggested that		16	paid research consultants, and underneath that, number 1.	
17	because it was in that performance review it was somehow		17	"Prior to communicating with a consultant to conduct research	
18	something Diamondback wanted you to do as an analyst. Do you		18	on a particular company, employees should take reasonable steps	
19	recall those questions?		19	to minimize the risk that, by communicating with the advisor,"	
20	A. Yes, I do.		20	meaning Diamondback, "or its employees, the consultant will be	
21	Q. Did Diamondback have a compliance policy?		21	breaching any confidentiality obligations owed by the	
22	A. Yes.		22	consultant to the company. Specifically, the advisor should,"	
23	Q. I want to show you what's been marked for identification as		23	and subsection A, "confirm that the consultant is not employed	
24	Government Exhibit 2252.		24	or recently within the past six months formerly employed by the	
25	MS. APPS: Can we get it on the screen?		25	company." Do you see that?	

CBKFNEW5	Tortora - redirec	Page 1221	CBKFNEW5	Tortora - redirec	Page 1223
1	A. Yes.		1	A. Those are the actual unit sales in this particular case for	
2	Q. Is that consistent with your recollection of the		2	Dell notebooks in the month of July.	
3	Diamondback policy for talking with consultants?		3	Q. And did you understand at the time you were receiving these	
4	A. Yes.		4	numbers that those were numbers that were internal to Dell?	
5	Q. When you worked there in 2008 and 2009?		5	A. Yes, I did.	
6	A. Yes.		6	Q. And that they were confidential?	
7	Q. Now, Mr. Tortora, if you could look back at Government		7	A. Yes, I did.	
8	Exhibit 237, Mr. Weingarten actually showed you a moment ago,		8	Q. Did you know one way or another how many clients PGR had?	
9	and again, this is, it says "Level met with Vista contact," and		9	A. I did not.	
10	Vista is what?		10	Q. Was it part of their marketing pitch that they actually had	
11	A. Vista is an expert networking firm. Sorry.		11	relatively few clients so that their clients could get an edge?	
12	Q. And it says, the first line "guy left Dell one month ago."		12	MR. FISHBEIN: Objection, leading.	
13	Do you see that?		13	THE COURT: Yes, sustained. Let's watch that.	
14	A. Yes.		14	Q. Could you turn to the second page of this document, Mr.	
15	Q. I take it that's within six months of that conversation --		15	Tortora. If you look at the e-mail that's dated June 17, 2009	
16	withdrawn. That's within the six month rule that we just saw		16	at 2:33 p.m., do you see that?	
17	in Diamondback's compliance policy, is that fair to say?		17	A. Yes.	
18	A. Yes.		18	Q. And again, why are these e-mails so stacked on top of each	
19	Q. And you spoke to Mr., somebody you knew as Dan at Dell		19	other?	
20	through a different consulting expert networking group, do you		20	A. So I can show Todd and the group how the conversations had	
21	recall that testimony?		21	progressed with the same expert, how the information has	
22	A. Yes.		22	changed and we could create a living track record of how	
23	Q. At the time, did you know his last name?		23	accurate his information was relative to what Dell actually	
24	A. I don't believe I knew his last name at the time.		24	reports.	
25	Q. Do you recall why it was that you were not made aware of		25	Q. So coming to this June 17 e-mail, and I'm just referring	
CBKFNEW5	Tortora - redirec	Page 1222	CBKFNEW5	Tortora - redirec	Page 1224
1	his last name?		1	you to this, Mr. Tortora, because Mr. Fishbein asked a series	
2	A. It was the standard practice of these expert networking		2	of questions about Mr. DeVore's accuracy, and you said in this	
3	firms to conceal their identity, and generally provided a last		3	e-mail beneath the words "Dell checks" under the first bullet	
4	initial.		4	point, it says, "This check has been good for very long time.	
5	Q. And did you understand what Mr., what Dan's last initial		5	Every Q but for some reason last Q he was POS on demand all Q	
6	was?		6	and Dell results weren't good. He didn't have explanation on	
7	A. D.		7	why, so will use with caution going forward." Could you	
8	Q. Now, Mr. Fishbein asked you a series of questions about		8	explain what this means?	
9	Mr. DeVore. Have you learned since you were approached by the		9	A. Yes, Ms. Apps. I had said Dan, it's my recollection he was	
10	FBI that his last name was in fact Mr. DeVore?		10	very accurate for a long period of time and at some point later	
11	A. Yes.		11	on he became less accurate. And this is exactly that. I'm	
12	Q. While at Diamondback did you understand that he worked at		12	basically saying that he's been good for a really long time but	
13	Dell?		13	he was inaccurate last quarter and he couldn't explain to me	
14	A. Yes.		14	why, so I'm a little cautious going forward using his	
15	Q. Is that true when you spoke to him?		15	information.	
16	A. Yes.		16	Q. And the date of this is June 17, 2009. Do you recall when	
17	Q. And Mr. Fishbein asked you a series of questions about how		17	you first started speaking to Mr. DeVore?	
18	long you spoke to Mr. DeVore and if you could look at what was		18	A. I believe it was early 2008.	
19	in evidence -- excuse me, Government Exhibit 175 that's on the		19	Q. Mr. Tortora, you were asked a series of questions by Mr.	
20	screen, and on the first page there's an e-mail on July 29,		20	Fishbein around the May 2008 quarter for Dell and showing a	
21	2009. If you could blow that up, Mr. Hoffman. Do you see		21	series of sell side reports and I just want to come to some of	
22	there that Mr. DeVore is providing you specific numbers, 2.1		22	those. Do you have a binder with Defense Exhibit 8228 in it?	
23	versus last check for 2.2 to 2.5. Do you see that?		23	THE COURT: Defense or Government Exhibit?	
24	A. Yes.		24	MS. APPS: It's Defense Exhibit 8228, it's in	
25	Q. What are those numbers referring to?		25	evidence. Mr. Tortora was actually asked about this particular	

CBKFNEW5	Tortora - redirect	Page 1225	CBKMNEW6	Tortora - redirect	Page 1227
1	document. It's actually on the screen.		1	Q. What is that referring to?	
2	Q. Now, Mr. Fishbein showed you this and asked you about the		2	A. That's the consensus estimates or sell side has Dell	
3	margin information contained in this document. Do you recall		3	modeled at 33 cents for the quarter while using Sandy's	
4	those questions?		4	information we are able to calculate or we expect a 36 to 37	
5	A. Yes.		5	cent earnings per share result.	
6	Q. And I think Mr. Fishbein was pointing out that the margin		6	Q. I think you testified on cross-examination that you	
7	in this -- what is this report referring to, this sell side		7	recalled that Sandy Goyal's information was that margin was	
8	report, what time frame?		8	approximately in line with the consensus estimates.	
9	A. Ms. Apps, it's a little blurry on my screen. Is there any		9	Do you remember that testimony?	
10	way to blow up maybe the top half so I can --		10	A. Yes.	
11	Q. Okay.		11	Q. Do you recall as you sit here today which of the other	
12	A. Yes, so it's a Citi, Citigroup e-mail report on Dell post		12	variables that go into EPS that led to the beat on consensus	
13	the earnings call, the date of which was up top, I saw it		13	here?	
14	earlier when you blew up the first half. Oh, May 30, 2008.		14	A. My recollection that it was mostly revenue driven.	
15	Q. So that's after the earnings call?		15	Q. Now, I want to ask you -- let's just talk for a second	
16	A. Yes. Yes, the day after.		16	about, there was a lot of questions. You were shown a lot of	
17	Q. And do you recall Mr. Fishbein pointed out that in this		17	different sell side reports during your cross-examination,	
18	sell side report there's some indication that margins were less		18	Mr. Tortora.	
19	than the market expectations. Do you recall that testimony?		19	For Dell, I think you testified there were a lot of	
20	A. Yes, I do.		20	sell side analysts covering Dell.	
21	Q. What does the report say about what the revenue did that		21	Do you recall that?	
22	quarter? If you look at the first line in the first paragraph		22	A. Yes.	
23	of that document.		23	Q. They come up with different predictions. Is that fair to	
24	A. I don't think, well, there's a line about revenue there.		24	say?	
25	It says while 1F quarter 09 revenue beat was largely		25	A. That's fair to say.	
CBKFNEW5	Tortora - redirect	Page 1226	CBKMNEW6	Tortora - redirect	Page 1228
1	expected -- I think that's their commentary on the revenue		1	Q. And how did those sell side reports relate to what Mr.	
2	beat. So it suggests there was a revenue beat and their		2	Fishbein also showed you, which was the first call or consensus	
3	opinion is that it was largely expected.		3	numbers?	
4	Q. And the, what does it say about EPS? And again what is		4	A. Can you ask that question again?	
5	EPS?		5	Q. Mr. Fishbein asked you also about the Thompson Reuters	
6	A. Earnings per share.		6	first call numbers?	
7	Q. What does it say about the EPS?		7	A. Yes.	
8	A. That it was 38 cents, four cents above expectations.		8	Q. What are they?	
9	Q. And what do you recall, or do you recall what information		9	A. The Thompson Reuters first call numbers is the aggregate or	
10	Mr. Goyal provided that quarter in advance of that quarterly		10	average estimate of all the different sell side reports. So if	
11	earnings announcement?		11	there is 30 sell side analysts, then they all make an earnings	
12	A. Yes. I recall it being revenue, gross margin and/or		12	prediction on Dell. The first call would be the average of	
13	operating margin.		13	those 30.	
14	MS. APPS: If you could, Mr. Hoffman, put up		14	Q. And you were also asked a number of questions about	
15	Government Exhibit 187.		15	somebody by the name of Katy Huberty.	
16	Q. And Mr. Fishbein also asked you about this document, but in		16	Who is she?	
17	particular the e-mail from you to Mr. Goyal on May 16, 2008 at		17	A. Katy Huberty was the sell side analyst at Morgan Stanley	
18	7:53 a.m., do you see that, "Hey street at 33, I get 36 to 37."		18	covering Dell and other stocks.	
19	Do you see that?		19	Q. She was one of those analysts that went into the first call	
20	A. Yes.		20	numbers?	
21	(Continued next page)		21	A. Yes.	
22			22	Q. If you could look at Government Exhibit 235.	
23			23	Again, Mr. Fishbein asked you a number of questions	
24			24	about your dialogue with Katy Huberty.	
25			25	Do you recall some of those questions?	

<p>CBKMNEW6 Tortora - redirect Page 1229</p> <p>1 A. Yes.</p> <p>2 Q. I want to ask you, you say here in the third sentence down:</p> <p>3 I reiterated GM concern. She believes me but still skeptical</p> <p>4 as doesn't understand how.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. When you wrote that, what did you mean?</p> <p>8 A. Basically, I told her that there is -- that there is some</p> <p>9 risk or there is some concern about Dell's gross margin for the</p> <p>10 quarter, and she basically took it with a grain of salt. She</p> <p>11 basically said, okay, I hear what you are saying, but I don't</p> <p>12 necessarily believe you or, I'm sorry, I don't necessarily see</p> <p>13 how that's going to happen, understand how, see how that's</p> <p>14 going to happen.</p> <p>15 Q. I want to show you, it's in evidence as a stipulation, but</p> <p>16 I want to show you some of the first call data for the quarter,</p> <p>17 August of 2008.</p> <p>18 MS. APPS: One moment, your Honor. I'm just looking</p> <p>19 for a document. I am just trying to find the stipulation.</p> <p>20 Thank you.</p> <p>21 May I approach, your Honor?</p> <p>22 THE COURT: You may.</p> <p>23 Q. If you look at stipulation signed between the parties</p> <p>24 containing the first call information, did that first call</p> <p>25 information say what the consensus number was for gross margin</p>	<p>CBKMNEW6 Tortora - redirect Page 1231</p> <p>1 Honor. Sorry.</p> <p>2 Q. If I could show you what's been marked for identification</p> <p>3 as Defense Exhibit 1234.</p> <p>4 Do you recognize that, Mr. Tortora?</p> <p>5 A. Yes.</p> <p>6 MR. FISHBEIN: I just need to see a copy.</p> <p>7 MS. APPS: It's an exhibit that --</p> <p>8 THE COURT: Doesn't matter. Show him the original.</p> <p>9 MR. FISHBEIN: What number is it?</p> <p>10 MS. APPS: 1234.</p> <p>11 MR. FISHBEIN: I got it.</p> <p>12 Q. Mr. Tortora, do you recognize --</p> <p>13 MS. APPS: Just one moment, your Honor. I'm sorry. I</p> <p>14 think there is no objection, your Honor. It's a Bloomberg</p> <p>15 stock price chart for Dell.</p> <p>16 MR. FISHBEIN: Just one second.</p> <p>17 MS. APPS: The government offers Defendant's Exhibit</p> <p>18 1234.</p> <p>19 MR. FISHBEIN: No objection.</p> <p>20 THE COURT: Is there a stipulation as to what it is?</p> <p>21 MS. APPS: Your Honor, it's a stock price chart for</p> <p>22 Dell US equities starting on January 2, 2008 through December</p> <p>23 31, 2009.</p> <p>24 THE COURT: So Defendant's Exhibit 1234 is received.</p> <p>25 (Defendant's Exhibit 1234 received in evidence)</p>
<p>CBKMNEW6 Tortora - redirect Page 1230</p> <p>1 in August of 2008, before Dell reported?</p> <p>2 A. 18.3 percent.</p> <p>3 Q. And we looked at Government Exhibit 214 earlier,</p> <p>4 Mr. Tortora. What was the gross margin number that Mr. Goyal</p> <p>5 gave you in advance of the earnings report? And in this case</p> <p>6 on August 5 of 2008.</p> <p>7 A. On August 5, it was 17.5 percent.</p> <p>8 Q. And you testified, I think, that you got additional updates</p> <p>9 after August 5?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall that testimony?</p> <p>12 Do you recall what direction the update went with</p> <p>13 respect to gross margin?</p> <p>14 A. Lower.</p> <p>15 Q. And do you recall what happened to the stock price when</p> <p>16 earnings were announced on August 28, 2008?</p> <p>17 A. It went down significantly.</p> <p>18 Q. I'm showing you what's been marked for identification as</p> <p>19 Government Exhibit 93.</p> <p>20 THE COURT: 93?</p> <p>21 MS. APPS: Yes.</p> <p>22 Q. Do you recognize this?</p> <p>23 A. I don't recognize the format, but it appears to be a</p> <p>24 Bloomberg -- the stock price of Dell off of Bloomberg.</p> <p>25 MS. APPS: One moment, your Honor. One moment, your</p>	<p>CBKMNEW6 Tortora - redirect Page 1232</p> <p>1 Q. Mr. Tortora, could you look at the page that indicates the</p> <p>2 prices on August 28?</p> <p>3 A. Yes. Of '08?</p> <p>4 Q. Yes, on the day of the earnings announcement.</p> <p>5 A. Yes.</p> <p>6 Q. For the August quarter for 2008.</p> <p>7 A. Yes.</p> <p>8 Q. And do you see that there is a percentage under the column</p> <p>9 price change?</p> <p>10 A. Yes.</p> <p>11 Q. On August 29 from August 28?</p> <p>12 A. Yes.</p> <p>13 Q. That's 13.8 percent. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Does that refresh your recollection about the amount of the</p> <p>16 price drop after the earnings announcement for Dell?</p> <p>17 A. Yes, Ms. Apps, I remember it was very significant, in the</p> <p>18 neighborhood of double digit percent decline.</p> <p>19 Q. I want to show you, just as Mr. Fishbein showed you some</p> <p>20 sell side reports for the May quarter, I want to show you a</p> <p>21 couple of sell side reports for the August quarter.</p> <p>22 Mr. Tortora, just to clarify, that was for the quarter</p> <p>23 that was announced by Dell on August 28, 2008, is that fair to</p> <p>24 say?</p> <p>25 A. That is correct, yes.</p>

CBKMNEW6	Tortora - redirect	Page 1233	CBKMNEW6	Tortora - redirect	Page 1235
1	Q. Showing you what's been marked as Government Exhibit 4002,		1	(At the side bar)	
2	do you recognize that document?		2	THE COURT: This is being offered for what purpose?	
3	A. Yes.		3	MS. APPS: They are not being offered for the truth,	
4	Q. What is it?		4	your Honor.	
5	A. It's a sell side report on Dell from Goldman Sachs.		5	THE COURT: What are they being offered for?	
6	MS. APPS: The government offers 4002.		6	MS. APPS: The same way that Mr. Fishbein showed that	
7	MR. FISHBEIN: Your Honor, I object. This is beyond		7	after the May announcement, the May 2008 announcement, there	
8	the scope of cross. We didn't do anything about stock prices		8	was sell side reports showing that margin was in line or lower	
9	in August. This whole subject, we talked about May. I don't		9	than what the street had expected. In this quarter what the	
10	know why we are talking about August now. That is the basis of		10	sell side reports show was the market thought there was a big	
11	my objection.		11	surprise on the downward side to the margin. So it's the same	
12	THE COURT: I recall there being various analyst		12	narrative -- it's the same sort of argument that Mr. Fishbein	
13	reports that were introduced. You are saying they are for a		13	was making or presenting through the May quarter, and we are	
14	different quarter?		14	trying to show the contrast for the August quarter.	
15	MR. FISHBEIN: Right.		15	MR. FISHBEIN: We were very precise in May.	
16	THE COURT: There was cross about what took place in		16	Mr. Tortora said that he believed that Mr. Goyal's information	
17	connection with sales in August, so overruled. I'll allow it.		17	was accurate and so the issue was his state of mind as he	
18	(Government's Exhibit 4002 received in evidence)		18	receives information from Mr. Goyal as to whether it's accurate	
19	Q. Can you explain what this is? Whose report is it?		19	or not. So the fact that he was put on notice that in May the	
20	A. It's Goldman Sachs, the analyst at Goldman Sachs, David		20	gross margin was off, we felt went to the issue of his state of	
21	Bailey, and he is basically reporting post Dell's quarter		21	mind in May about the accuracy of the gross margin number he is	
22	reported on August 28, 2008.		22	getting from Goyal. That's what we did it for. Now we are in	
23	Q. What does it say in the heading there?		23	a different quarter. It seems to me, from Ms. Apps' questions,	
24	A. The heading says: Dell's margins and stock take a step		24	what she is really doing is just using these analyst reports to	
25	back due to growth-first focus.		25	show that the stock price went down, which is for the truth.	
CBKMNEW6	Tortora - redirect	Page 1234	CBKMNEW6	Tortora - redirect	Page 1236
1	Q. I want to show you two more exhibits. I'm showing you		1	MS. APPS: No.	
2	what's been marked for identification as Government Exhibit		2	THE COURT: It's being offered to show the difference,	
3	4004 and 4005.		3	the delta between the information that was provided by Goyal,	
4	Do you recognize those?		4	and the expectations of the market or that the market	
5	A. Yes.		5	expectations were well founded or not I guess is for others to	
6	Q. What are they?		6	debate. But I think it's the fact of the difference and -- I	
7	A. Similar type of reports on Dell's quarter that Dell		7	don't have these.	
8	reported on August 28, 2008, this time by Lehman Brothers and		8	MS. APPS: Sorry, your Honor. These reflect -- Mr.	
9	Merrill Lynch.		9	Fishbein was using it to make the point that the market had a	
10	MS. APPS: The government offers 4004 and 4005.		10	different -- trying to show that the market had a different	
11	THE COURT: Same objection, I presume?		11	number and now we are saying that in the second quarter the	
12	MR. FISHBEIN: And also if they are being offered for		12	market came out with the number that Mr. Goyal had given them.	
13	the truth, I would object to that basis, too, as opposed to		13	THE COURT: I think there is smallish points. I am	
14	what information --		14	going to allow it. I'll allow the exhibits. Let's move on.	
15	THE COURT: Let's have a side bar. I want to make		15	How much more do you have?	
16	sure I understand what they are being offered for, but I don't		16	MS. APPS: About 15, 20 minutes.	
17	want to do that in front of the jury.		17	THE COURT: You are going to do some recross?	
18	(Continued on next page)		18	MR. FISHBEIN: Yes.	
19			19	THE COURT: How long do you think --	
20			20	MR. FISHBEIN: Right now it would be 10, 15 minutes.	
21			21	MR. WEINGARTEN: Three hours.	
22			22	(Continued on next page)	
23			23		
24			24		
25			25		

<p>CBKMNEW6 Tortora - redirect Page 1237</p> <p>1 (In open court)</p> <p>2 MS. APPS: The government offers 4004 and 4005.</p> <p>3 THE COURT: I'll allow those. Government's 4004 and</p> <p>4 4005 are received.</p> <p>5 (Government's Exhibits 4004 and 4005 received in</p> <p>6 evidence)</p> <p>7 Q. Mr. Tortora, can you just explain what 4004 is?</p> <p>8 A. 4004, it's a sell side report by Lehman Brothers on Dell</p> <p>9 after Dell reported the August quarter on August 28, 2008.</p> <p>10 Q. What does it say at the top there? Margins hit a snag.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. What did you understand that to mean?</p> <p>14 A. They missed margins.</p> <p>15 Q. And then if you could look at 4005.</p> <p>16 Again, what is this report?</p> <p>17 A. Merrill Lynch is issuing a similar report on Dell's</p> <p>18 earnings in the same time period.</p> <p>19 Q. What does it say happened with respect to earnings?</p> <p>20 A. Again, similar commentary on gross margins, that the title</p> <p>21 is strong revenue growth offset by lower gross margins. The</p> <p>22 adjusted gross margin of 17.3 percent was well below our</p> <p>23 estimate of 18.4 percent.</p> <p>24 Q. Mr. Tortora, do you have in front of you Defense Exhibit</p> <p>25 8924? It was something Mr. Fishbein showed you towards the</p>	<p>CBKMNEW6 Tortora - redirect Page 1239</p> <p>1 MR. FISHBEIN: Objection. Beyond the scope. Seagate</p> <p>2 has not been mentioned.</p> <p>3 THE COURT: I don't recall any mention of Seagate.</p> <p>4 This is in evidence, but I don't recall any discussion of</p> <p>5 Seagate. I think it is beyond the scope.</p> <p>6 Q. Let me ask you then if there is a line there, BTW,</p> <p>7 Christian also saying Dell will be good?</p> <p>8 A. Yes.</p> <p>9 Q. Revs miss margins better than expected and EPS upside.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What did you understand that to mean?</p> <p>13 A. That Christian is saying Dell will have a good quarter</p> <p>14 because EPS will beat due to margins despite a revenue miss.</p> <p>15 Q. Do you recall during your time at Diamondback whether this</p> <p>16 person Christian from Craig Hammel had any -- provided you with</p> <p>17 information regarding Dell?</p> <p>18 A. I don't recall that. I actually -- let me say it this way.</p> <p>19 It's not somebody that was used regularly, and I don't recall</p> <p>20 this particular e-mail.</p> <p>21 Q. And Mr. Fishbein also showed you another exhibit for</p> <p>22 Christian at Craig Hallum. It's Defense Exhibit 1111.</p> <p>23 Mr. Tortora, if I could direct your attention to the</p> <p>24 e-mail at the bottom of the page. Do you see it talks about</p> <p>25 gross margin there?</p>
<p>CBKMNEW6 Tortora - redirect Page 1238</p> <p>1 end.</p> <p>2 A. I don't believe I have Mr. Fishbein's exhibits anymore.</p> <p>3 Q. One of the documents that Mr. Fishbein showed you at the</p> <p>4 end and didn't really ask too many questions.</p> <p>5 First of all, this e-mail comes from Mr. Horvath to</p> <p>6 you --</p> <p>7 THE COURT: What number is this?</p> <p>8 MS. APPS: It's Defense Exhibit 8924.</p> <p>9 Q. Do you see at the bottom it's an e-mail from Mr. Horvath to</p> <p>10 Mr. Adondakis to you and to Mr. Kuo on November 20, 2008.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And the heading is Christian CH on STX.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What is Christian CH?</p> <p>17 A. Christian from Craig Hallum. He was a sell side analyst</p> <p>18 who worked for Craig Hallum.</p> <p>19 Q. What is STX?</p> <p>20 A. STX is a ticker symbol for Seagate, a large hard disk drive</p> <p>21 maker.</p> <p>22 Q. Do you recall what information, if anything, Mr. Hallum</p> <p>23 provided on Seagate?</p> <p>24 A. Yes, I do.</p> <p>25 Q. What was that?</p>	<p>CBKMNEW6 Tortora - redirect Page 1240</p> <p>1 A. Yes.</p> <p>2 Q. And this is a report from Mr. Adondakis, is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. So you don't recall having a conversation with Christian?</p> <p>5 A. That's correct.</p> <p>6 Q. It says there in the second bullet point from the bottom on</p> <p>7 the first paragraph: Does not get -- there is a hash tag S,</p> <p>8 but thinks GM could be better than 17.7 percent.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What did you understand that to mean?</p> <p>12 A. That he does not get internal numbers from the company, but</p> <p>13 he's of the opinion that gross margin can be better than 17.7</p> <p>14 percent.</p> <p>15 Q. Now, just to be clear, Mr. Tortora, you did get numbers</p> <p>16 through Mr. Goyal for gross margin information, right?</p> <p>17 A. Yes.</p> <p>18 Q. And this e-mail talks about checks as well.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. There were a lot of questions that Mr. Fishbein asked you</p> <p>22 about the meaning of checks, and you testified in substance</p> <p>23 that it depends on who is saying the word and what the context</p> <p>24 is.</p> <p>25 Do you recall that?</p>

<p>CBKMNEW6 Tortora - redirect Page 1241</p> <p>1 A. Yes, that's correct.</p> <p>2 Q. Now, Mr. Fishbein, along similar lines, showed you to sell</p> <p>3 side reports from Mr. Kuo which also used the word checks.</p> <p>4 Do you recall those questions?</p> <p>5 A. Yes.</p> <p>6 MS. APPS: Mr. Hoffman, if you could put up</p> <p>7 Government's Exhibit 1350.</p> <p>8 Q. This is an exhibit -- if you could turn to the second page.</p> <p>9 Do you recognize that, Mr. Tortora? Again, this is a document</p> <p>10 in evidence?</p> <p>11 A. Yes.</p> <p>12 Q. What is it?</p> <p>13 A. This was a Bear Stearns report by Gurinder and Danny Kuo on</p> <p>14 Altera.</p> <p>15 Q. And it uses the word there channel checks.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Now, when you first looked at Mr. Kuo's information and you</p> <p>19 saw the words channel checks, before you spoke to him, did you</p> <p>20 know one way or another where that information was coming from?</p> <p>21 A. I did not.</p> <p>22 Q. And then when you subsequently spoke to Mr. Kuo, what did</p> <p>23 you learn about where the information was coming from in that</p> <p>24 first paragraph?</p> <p>25 A. That he had a contact directly at the company Altera.</p>	<p>CBKMNEW6 Tortora - redirect Page 1243</p> <p>1 Do you recognize that document?</p> <p>2 A. Yes.</p> <p>3 Q. What is it?</p> <p>4 A. It's an instant message exchange between myself and Todd</p> <p>5 Newman on July 9 of 2008.</p> <p>6 MS. APPS: The government offers 308.</p> <p>7 MR. FISHBEIN: I just need a minute to read it.</p> <p>8 THE COURT: Do you have a copy for me?</p> <p>9 MS. APPS: Yes.</p> <p>10 THE COURT: Thanks.</p> <p>11 Any objection?</p> <p>12 MR. FISHBEIN: Yes, your Honor. On hearsay grounds.</p> <p>13 I don't know if we should approach. Hearsay within hearsay. I</p> <p>14 believe there are statements --</p> <p>15 THE COURT: Let's have a side bar.</p> <p>16 I'm sorry, ladies and gentlemen. I try to keep this</p> <p>17 to a minimum, but sometimes you can't avoid it.</p> <p>18 (Continued on next page)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>CBKMNEW6 Tortora - redirect Page 1242</p> <p>1 Q. And the information that his contact was providing, is that</p> <p>2 contained in the first paragraph there?</p> <p>3 A. Yes.</p> <p>4 Q. Did knowing that Mr. Kuo was obtaining this information</p> <p>5 from somebody inside the company have any significance in terms</p> <p>6 of your evaluation of Mr. Kuo's analysis or his sell side</p> <p>7 reports?</p> <p>8 A. Yes.</p> <p>9 Q. And can you explain that?</p> <p>10 A. Yes. It provides a level of comfort, a level of</p> <p>11 credibility, a level of access that others don't have.</p> <p>12 Q. And when you talked with Mr. Newman about information from</p> <p>13 sell side analysts in general, did you discuss with him where</p> <p>14 they would get their information from, if you knew it?</p> <p>15 MR. FISHBEIN: Objection to the form.</p> <p>16 THE COURT: Sustained. Let's try to ask it in a</p> <p>17 nonleading way.</p> <p>18 Q. Do you recall discussing with Mr. Newman different sell</p> <p>19 side analysts and where they got information from?</p> <p>20 A. Yes.</p> <p>21 Q. And when you had those discussions, did you hold anything</p> <p>22 back about what you had learned?</p> <p>23 A. No.</p> <p>24 Q. I am going to show you what's been marked for</p> <p>25 identification as Government Exhibit 308.</p>	<p>CBKMNEW6 Tortora - redirect Page 1244</p> <p>1 (At the side bar)</p> <p>2 MR. FISHBEIN: The objection is this appears to be</p> <p>3 Mr. Tortora repeating what a B of A analyst who is unnamed</p> <p>4 said. And the analyst or other people who were also unnamed</p> <p>5 say that the analyst has a mole, apparently. That's like</p> <p>6 double hearsay about the mole. And I know if this comes in we</p> <p>7 are going to hear in the summation and everywhere else that</p> <p>8 Mr. Newman somehow knows about a mole. I think the fact that</p> <p>9 it's double hearsay, I think it's both hearsay and I think</p> <p>10 prejudice outweigh probative.</p> <p>11 MS. APPS: Just to be clear, it is not being offered</p> <p>12 for the truth. The dialogue is with Mr. Newman about the</p> <p>13 accuracy about a sell side's analyst's calls or predictions and</p> <p>14 Mr. Newman is convinced, based on the accuracy, that he must</p> <p>15 have somebody inside the company. And I think it responds to a</p> <p>16 line of Mr. Fishbein's cross-examination that talks about how</p> <p>17 when you see channel checks in sell side reports that somehow</p> <p>18 that means that is all legitimate or not legitimate.</p> <p>19 Mr. Newman doesn't really understand what the different sell</p> <p>20 side analysts or companies are saying, but this suggests a</p> <p>21 level of sophistication and understanding of the depth of</p> <p>22 different sell side analyst's sources beyond that.</p> <p>23 THE COURT: Where does it say where he is?</p> <p>24 MS. APPS: It says speaking to B of A sem analyst,</p> <p>25 Bank of America semiconductor analyst. Mr. Tortora is</p>

CBKMNEW6	Tortora - redirect	Page 1245	CBKMNEW6	Tortora - redirect	Page 1247
1	saying -- he is reporting that the B of A analyst is saying he		1	of contact. And Mr. Tortora is just saying, no, he doesn't.	
2	has no contacts, the truth of which we don't care about. And		2	Whether or not the analyst has any kind of contact is	
3	Mr. Tortora says: Just have had good calls, meaning good stock		3	irrelevant and it's no more triple hearsay than the multiple	
4	predictions with Intel. And then down below he's talking about		4	e-mails Mr. Fishbein introduced showing statements attributable	
5	wanting to own the stock into print because of expectations low		5	to Lynne Tyson. In that respect, I think the objection is not	
6	and Taiwan PC data. And Newman says: That's strange, he was		6	well taken.	
7	pretty precise last quarter. And Newman says: I will get		7	THE COURT: I think that the only issue is whether	
8	sales guy to call him. He not telling the truth. In other		8	it's confusing. I am not sure if the witness is up to	
9	words, not telling the truth about whether he has sources.		9	explaining all this.	
10	Mr. Newman says: I had blowup with him while back, so		10	MR. FISHBEIN: It's incredibly confusing. It is one	
11	wondering if he not saying because of that. So he is saying, I		11	thing if Mr. Newman said mole or something like that. But	
12	wonder if Mr -- if the analyst is hiding the fact of the		12	everyone. Who is everyone? Thinks he has a mole. But he says	
13	source. And Mr. Tortora says: Strange, he sounds honest, said		13	he's not close to management and has no contact. That is	
14	everyone thinks he has a mole, but says he is not close to		14	confusing. The analyst says he has no contact, but there are	
15	management and has no contact.		15	people, we don't know who they are, who say he has a mole. I	
16	So it's not for the truth of whether this guy has a		16	just think once that gets in, this is a charged word, the	
17	contact or not. It's the discussion between Mr. Tortora and		17	government is going to use it. They are going to really	
18	Mr. Newman about other analysts' sources. And part of the		18	emphasize it. The prejudice outweighs the probative.	
19	defense that Mr. Fishbein I think has put forward is that		19	THE COURT: Overruled. I don't think it is that	
20	Mr. Tortora didn't tell Mr. Newman where information was coming		20	complicated. I think you opened the door to this by suggesting	
21	from or didn't distinguish whether it's coming from I or a sell		21	that your client was in the dark and didn't know anything about	
22	side person or if it's coming from a sell side person, whether		22	the sources. I think that that's -- I think it's a fair	
23	it's legitimate or not legitimate. And what this shows is that		23	argument. I don't know that the witness will get you very far.	
24	Mr. Newman is in the weeds about those very issues.		24	Let's do that.	
25	MR. FISHBEIN: Your Honor, I think the length of the		25	(Continued on next page)	
CBKMNEW6	Tortora - redirect	Page 1246	CBKMNEW6	Tortora - redirect	Page 1248
1	explanation shows how confusing it is. Honestly, I don't		1	(In open court)	
2	follow it. I am not even sure what they are talking about.		2	THE COURT: Let's proceed.	
3	THE COURT: I think the main point is, there is a		3	MS. APPS: The government offers 308.	
4	reference to a mole and understanding the mole was inside the		4	THE COURT: 308 is received.	
5	company and Mr. Newman's response wasn't, no, that's		5	(Government's Exhibit 308 received in evidence)	
6	outrageous, I can't believe that. Let's stop.		6	MR. FISHBEIN: Just for the record I have my	
7	MR. FISHBEIN: Although he says weird.		7	objection.	
8	THE COURT: He says weird.		8	THE COURT: Right.	
9	MR. FISHBEIN: Your Honor, but this is like triple		9	Q. Mr. Tortora, if you could look at the beginning of this	
10	hearsay. This is people saying --		10	instant message, the line at the top starts with: Statement	
11	THE COURT: It's not being offered for the truth.		11	from you speaking to B of A semi analyst now.	
12	It's being offered to explain the relationship between Newman		12	What does that mean?	
13	and Tortora and Newman's understanding that some of these		13	A. That means I was on the phone with the sell side analyst	
14	sources are inside sources and his reaction to that.		14	from Bank of America that covers semiconductors.	
15	MR. FISHBEIN: Although the substance of this is that		15	Q. The next line you say, says have no contact, just have had	
16	people are saying that, but that it's not true. In other		16	good calls.	
17	words, what they say right at the beginning is he has no		17	Can you explain what you meant by that when you wrote	
18	contact, but he has good cause. People say he has a mole, but		18	it?	
19	he has no contact. I just think that's horribly confusing and		19	A. Yes. That he does not have a direct source at the company	
20	prejudicial. What this really is saying is the opposite.		20	giving him information. He has just made the accurate	
21	THE COURT: I am not sure that that's the right way --		21	predictions in the past.	
22	do you agree with his interpretation?		22	Q. And Mr. Newman responds: WINTC, question mark.	
23	MS. APPS: No. I think the point of this is it's just		23	Do you see that?	
24	showing that Mr. Newman sees that an analyst has a high degree		24	A. Yes.	
25	of accuracy and believes that the analyst must have some kind		25	Q. What does that mean?	

<p>CBKMNEW6 Tortora - redirect Page 1249</p> <p>1 A. He is asking me with respect to Intel, if my comments are 2 with respect to Intel. 3 Q. And then states WTF and below that, you respond why? And 4 you say: He wants to own into print because he thinks 5 expectations low and Taiwan PC data okay, but has no read on 6 what will say. 7 Can you explain what you meant by that when you wrote 8 it? 9 A. Yes. That this Bank of America analyst is making a 10 positive call into the Intel earnings announcement because he 11 thinks the market expectations are low and there was some 12 positive personal computer data out of Taiwan and that's 13 specific to the companies that make the actual PCs themselves, 14 and he is saying -- he further goes on to say or I go on to say 15 that he has no read on what they will say, meaning he will have 16 no insight on what the company will actually say on the 17 earnings call. 18 Q. And then you write: Or do for Q2. What did that mean? 19 A. I continue my thought. He will have no read on what the 20 company will say or do for Q2. 21 Q. Mr. Newman responds: That strange, he was pretty precise 22 last Q. 23 What did you understand that to mean? 24 A. That means he's a little surprised that he does not have a 25 direct contact because the information was detailed and</p>	<p>CBKMNEW6 Tortora - redirect Page 1251</p> <p>1 hiding his contact. He is saying -- he is not even giving 2 specific numbers and he is saying he has no contact. He is 3 just saying if the company reports this, a certain number, a 4 market expectations are low, then the stock will do something 5 off of that. He is just being very general, very vague. 6 Q. Mr. Newman responds: Weird. And then you respond to that: 7 He said he was playing expectations game in past two quarters. 8 Do you see that? 9 A. Yes. 10 Q. What did that mean? 11 A. Again, he was gauging what market expectations were and 12 taking the approach based on those market expectations whether 13 to buy or sell the stock into the quarter. 14 Q. And Mr. Newman then responds: Wish I could do that as well 15 as him on all names. 16 What did you understand that to mean? 17 A. Basically, that the guy has been right the last couple of 18 quarters and he's been right on Intel and he has gauged market 19 expectations and made money off of it and that he wished he 20 could do that. 21 Q. Mr. Tortora, Mr. Fishbein asked you a number of questions 22 about the stock tips you gave your stepfather, including Dell, 23 in August 2008. 24 Do you recall those questions? 25 A. Yes.</p>
<p>CBKMNEW6 Tortora - redirect Page 1250</p> <p>1 accurate for last quarter. 2 Q. Mr. Newman continues: I will get sales guy to call him. 3 He not telling the truth. I had blow up with him while back, 4 so wonder if he not saying cause of that. 5 Can you explain what you understood Mr. Newman to be 6 saying in those two lines? 7 A. Yes. Mr. Newman believes he is lying, that he does have a 8 contact at the company and that he had a fight with this 9 analyst a while back, so he wonders if this analyst is just not 10 telling me, knowing that I'm working for Todd. 11 Q. Then you respond: Yep, strange, sounds honest, said 12 everyone thinks he has mole, says not close to management and 13 has no contact, but not even saying I think they will do this 14 or that, just saying could be this or could be that, and if 15 that, then stock will do this. 16 What did that mean, Mr. Tortora? 17 MR. FISHBEIN: Objection. This is his understanding. 18 THE COURT: What did you mean to convey when you wrote 19 that? 20 THE WITNESS: Yes, your Honor. I say that he sounds 21 honest and that he was telling me that everyone thinks he has a 22 mole, which means he has a friend or a contact at the company, 23 but he was telling me that he's not even close to management. 24 He has no contact. And then I move on to tell Todd, he is not 25 even telling me that here is what the numbers will be and</p>	<p>CBKMNEW6 Tortora - redirect Page 1252</p> <p>1 Q. And he asked you to compare information that you gave to 2 your stepfather to the information you gave to Mr. Newman. 3 Do you recall that? 4 A. Yes. 5 Q. Was your step father ever a hedge fund manager of a 6 multibillion dollar hedge fund? 7 A. No. 8 Q. Did your stepfather ever pay a consultant for confidential 9 information? 10 A. No. 11 Q. And Mr. Fishbein asked you about a particular e-mail that 12 you sent to him on August 5, which is Defense Exhibit 9819? 13 THE COURT: Do you want him to look at it? 14 MS. APPS: Yes, your Honor. I think we actually have 15 this one on the screen. It's in evidence. 16 I want to ask you, Mr. Hoffman, if you could also put 17 up Government Exhibit 214 on the same page, which we looked at 18 earlier. 19 Q. Mr. Tortora, what I want to ask you is, in the e-mail at 20 the top of the screen, which is a communication with you and 21 your stepfather, did you give any numbers to your stepfather? 22 A. I did not. 23 Q. And is it the same day as you sent the e-mail to Mr. Newman 24 that contained the specific numbers on margin and revenue for 25 Dell?</p>

<p>CBKMNEW6 Tortora - redirect Page 1253</p> <p>1 A. Yes.</p> <p>2 Q. What did your stepfather do for a living?</p> <p>3 A. He owned a courier company that ran errands for another</p> <p>4 companies.</p> <p>5 Q. When you were working at Diamondback, was he still working?</p> <p>6 A. He was retired.</p> <p>7 Q. And whose money was he investing in his trading?</p> <p>8 A. His own.</p> <p>9 Q. And did he ever tell you the stocks that comprised the bulk</p> <p>10 of his portfolio?</p> <p>11 MR. FISHBEIN: Objection. Hearsay.</p> <p>12 THE COURT: Sustained.</p> <p>13 Q. Did you understand Dell to be a large holding in his</p> <p>14 portfolio?</p> <p>15 A. No.</p> <p>16 Q. Earlier on in the cross-examination Mr. Fishbein asked you</p> <p>17 a number of questions about your obligations under the</p> <p>18 cooperation agreement that you had with the government?</p> <p>19 A. Yes.</p> <p>20 Q. First of all, what do you understand your obligations to be</p> <p>21 under that cooperation agreement?</p> <p>22 A. Tell the truth, cooperate fully, and commit no further</p> <p>23 crimes.</p> <p>24 Q. And in cooperating fully or meeting with the government,</p> <p>25 what are you required to tell them in terms about the conduct</p>	<p>CBKMNEW6 Tortora - redirect Page 1255</p> <p>1 A. Yes.</p> <p>2 Q. And did you talk about the criminal conduct of some people</p> <p>3 that you knew about or all of the people you knew about?</p> <p>4 A. All of the people I knew about.</p> <p>5 Q. And, Mr. Tortora, the first picture on this board is a</p> <p>6 picture of Sandy Goyal. It's in evidence.</p> <p>7 Did you provide information about Mr. Goyal when you</p> <p>8 were approached by the FBI?</p> <p>9 A. I did.</p> <p>10 MR. FISHBEIN: Objection to the relevance. I get the</p> <p>11 cooperation agreement, but this part, I am not sure.</p> <p>12 THE COURT: Overruled.</p> <p>13 A. I did.</p> <p>14 Q. Did you provide information about Mr. Goyal to the</p> <p>15 government before Mr. Goyal was criminally charged?</p> <p>16 A. I did.</p> <p>17 Q. Did you provide information to the government that was</p> <p>18 incriminating to Mr. Adondakis?</p> <p>19 A. Yes.</p> <p>20 Q. Did you provide information to the government that was</p> <p>21 incriminating to Mr. Kuo?</p> <p>22 A. Yes.</p> <p>23 Q. Did you provide information to the government that was</p> <p>24 incriminating to Mr. Horvath?</p> <p>25 A. Yes.</p>
<p>CBKMNEW6 Tortora - redirect Page 1254</p> <p>1 that you're aware of?</p> <p>2 A. Cooperate fully, tell the truth, which means don't hold</p> <p>3 anything back, tell them everything I know about everything</p> <p>4 they ask.</p> <p>5 Q. And is that just your conduct?</p> <p>6 A. No. About my conduct and others as well.</p> <p>7 Q. If you could take a look at the cooperation agreement,</p> <p>8 Government Exhibit 3516-3 that's in evidence. And if you could</p> <p>9 turn to the second page.</p> <p>10 You see there it sets forth -- it says under</p> <p>11 subparagraph A, Mr. Tortora, that you shall truthfully and</p> <p>12 completely disclose all information with respect to activities</p> <p>13 of himself, meaning you, and others concerning all matters</p> <p>14 about which this office, meaning the United States Attorney's</p> <p>15 Office, asks of him, meaning you.</p> <p>16 Do you see that there?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Is this a document that you signed?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Are you permitted to withhold information about any</p> <p>21 particular individuals under the terms of your agreement?</p> <p>22 A. I'm not.</p> <p>23 Q. Now, you testified that you had dozens of meetings with the</p> <p>24 government over the last two years.</p> <p>25 Do you recall that testimony?</p>	<p>CBKMNEW6 Tortora - redirect Page 1256</p> <p>1 Q. Did you provide information to the government that was</p> <p>2 incriminating about a number of other people that we have not</p> <p>3 even discussed at this trial?</p> <p>4 A. Yes.</p> <p>5 Q. Now, Mr. Fishbein in this connection also asked you about</p> <p>6 substantial assistance and a letter that the government will</p> <p>7 write at the time of sentencing called a 5K letter.</p> <p>8 Do you recall those questions?</p> <p>9 A. Yes.</p> <p>10 Q. And what is your understanding of what will be contained in</p> <p>11 that 5K letter with respect to the assistance you provide to</p> <p>12 the government?</p> <p>13 A. It will outline the extent of my cooperation as well as the</p> <p>14 extent of my crimes.</p> <p>15 Q. Is it your understanding that that letter will contain some</p> <p>16 but not all of the assistance that you provided in terms of the</p> <p>17 multiple different individuals you gave information about?</p> <p>18 A. My understanding is it will include all of the assistance.</p> <p>19 Q. Now, Mr. Tortora, by the way, you were also asked, as you</p> <p>20 sit here today, if this is the only trial that you testified in</p> <p>21 today.</p> <p>22 Do you recall that testimony?</p> <p>23 A. Yes.</p> <p>24 Q. Now, do you know whether there is going to be any other</p> <p>25 trials you may have to testify about in the future?</p>

<p>CBKMNEW6 Tortora - redirect Page 1257</p> <p>1 A. I don't know if there is going to be any other trials that 2 I have to testify. 3 Q. Now, you were also asked about a recording, a telephone 4 call that you made at the FBI direction in December of 2010 5 with Mr. Kuo? 6 Do you recall that? 7 A. Yes. 8 MS. APPS: I don't know if the defense exhibit is 9 still there. It's 9531T. 10 MR. FISHBEIN: That's not offered yet. 11 Q. Now, was that call recorded? 12 A. Yes. 13 Q. How was it recorded? 14 A. At the FBI's direction they told me -- they taught me how 15 to set up a mechanism that it would record the call for their 16 purposes. 17 Q. And so did you do what it is that you need to do to have it 18 recorded? 19 A. Yes. 20 Q. When you were talking to Mr. Kuo, you understood that 21 everything you were saying was being recorded? 22 A. Of course. 23 Q. At the time of that call in December of 2010, do you recall 24 what was happening in terms of the news media about your 25 involvement?</p>	<p>CBKMNEW6 Tortora - redirect Page 1259</p> <p>1 Mr. Newman or Mr. Kuo? 2 MR. FISHBEIN: Objection. Leading. 3 THE COURT: Did you have an understanding as to what 4 the purpose of the call was? 5 THE WITNESS: Yes, your Honor. The FBI instructed me 6 that it was to elicit information from Mr. Kuo, not Mr. Newman. 7 Q. Now, you testified on cross-examination that the FBI came 8 up with a rouse or a fiction to assist you in that purpose on 9 the telephone call with Mr. Kuo. 10 Do you recall that testimony? 11 A. Yes. 12 Q. And did you try to carry out the rouse as the FBI had 13 instructed you? 14 A. I did, to the best of my ability, yes. 15 Q. And did you ever ask the FBI why they picked one particular 16 rouse over another particular rouse? 17 A. No, I did not. 18 Q. Again, Mr. Tortora -- withdrawn. 19 Now, Mr. Fishbein asked you a series of questions 20 about the consultants that you recommended to Mr. Newman during 21 your time at Diamondback. 22 Do you recall that testimony? 23 A. Yes. 24 Q. And he actually put up an exhibit, Defense Exhibit 8599, 25 and it had something from John Souza.</p>
<p>CBKMNEW6 Tortora - redirect Page 1258</p> <p>1 A. Yes. 2 Q. What do you recall? 3 MR. FISHBEIN: Objection. 4 THE COURT: Overruled. I'll allow it. 5 A. The FBI had raided the headquarters of Diamondback, Level 6 Global, Block Capital, and there was a lot of press reports 7 being written about this investigation. 8 Q. Do you recall that Mr. Kuo said on the call a number of 9 times, he referenced the fact that your phone could be tapped 10 or taped? 11 A. Yes. 12 Q. Do you remember that? 13 You said things like: I have a high suspicion that 14 your phone is tapped. 15 Do you recall that? 16 A. Yes. 17 Q. He says: I don't even know why I'm talking to you, things 18 like that? 19 A. Yes. 20 Q. He referenced the Bloomberg news article and the search and 21 other things. 22 Do you recall that? 23 A. Yes. 24 Q. Now, the FBI -- withdrawn. 25 Was the purpose of this call to get evidence on</p>	<p>CBKMNEW6 Tortora - redirect Page 1260</p> <p>1 Do you recall testimony about John Souza? 2 A. Yes, I do. 3 MS. APPS: One moment, your Honor. I was looking for 4 an exhibit. While we do that, I'll show another one. 5 Q. Was another consultant that you referenced -- was another 6 consultant that you referenced K.C. Sentz? 7 A. Yes. Ms. Apps, when you asked if I referenced it, what are 8 you specifically referring to? 9 Q. Mr. Fishbein asked you a number of questions about 10 different consultants. 11 A. Yes. 12 Q. Who was K.C. Sentz? 13 A. K.C. Sentz was actually a family friend of mine who joined 14 as a consultant for Diamondback for a period of time. 15 Q. I'm showing you what's been marked for identification as 16 Government Exhibit 325. 17 Do you recognize that document? 18 A. Yes. 19 Q. What is it? 20 A. It's an e-mail exchange -- it's an e-mail between Betty 21 Valouktzis and K.C. Sentz that gets sent to Cathy Magee and it 22 gets sent from Cathy Magee to Todd and I, and then Todd and I 23 have dialogue, and this is on January 8, 2008. 24 MS. APPS: The government offers 325. 25 MR. FISHBEIN: Objection to relevance.</p>

CBKMNEW6	Tortora - redirect	Page 1261	CBKMNEW6	Tortora - redirect	Page 1263
1	THE COURT: I don't remember any testimony about this		1	A. He was the primary approver.	
2	individual.		2	Q. And did he get involved in handling certain things like	
3	MS. APPS: Your Honor, I don't have Defense Exhibit		3	fees of being consultants and how much to pay the consultants?	
4	8599, but I think he was one of the ones on there and Mr.		4	MR. FISHBEIN: Objection to form.	
5	Fishbein asked a number of questions about consultants that		5	THE COURT: Overruled. You can answer.	
6	Mr. Tortora recommended to Mr. Newman, and I think this is one		6	A. Yes, he did.	
7	of those consultants. This is a follow-up to that. It will be		7	Q. Now, with respect to Ruchi Goyal, Mr. Tortora, did Ruchi	
8	very brief.		8	Goyal ever provide any weekly reports like John Souza or	
9	MR. FISHBEIN: I did not ask about this consultant.		9	Mr. Kanowitz?	
10	THE COURT: If the exhibit is in, consultants were		10	MR. FISHBEIN: Objection, your Honor. We did not go	
11	discussed.		11	into this on cross. This is beyond the scope.	
12	Do you have the exhibit that was introduced by the		12	THE COURT: I think it's fair to compare and contrast	
13	defendant?		13	Ruchi Goyal with the ones you did go into, so overruled.	
14	MR. FISHBEIN: What exhibit is it?		14	A. I'm sorry. Ms. Apps, can you ask that one more time.	
15	MS. APPS: It's 8599.		15	Q. Did Ruchi Goyal ever provide kind of weekly or biweekly	
16	THE COURT: Defense 8599, right?		16	reports that the consultants, John Souza and Scott Kanowitz,	
17	MS. APPS: Right.		17	provided to you and Mr. Newman?	
18	THE COURT: Does anybody have it? It's one of the		18	A. She never provided any report of any kind.	
19	ones you put in this morning or the other day?		19	Q. Did Mr. Sandy Goyal provide regular weekly or biweekly	
20	Let's move on.		20	reports like those that Mr. Kanowitz provided?	
21	MS. APPS: I take it --		21	A. No.	
22	THE COURT: If somebody can find me the exhibit,		22	Q. Now, Mr. Fishbein actually asked you a couple of questions	
23	great. I'll take a look. Until then, I will sustain.		23	about your Gmail account.	
24	Q. You were asked about John Souza.		24	Do you recall those questions?	
25	Do you recall those questions, Mr. Tortora?		25	A. Yes.	
CBKMNEW6	Tortora - redirect	Page 1262	CBKMNEW6	Tortora - redirect	Page 1264
1	A. Yes.		1	Q. And you were asked whether Mr. Newman instructed you not to	
2	Q. What services did Mr. Souza provide Diamondback?		2	use Gmail for work and then Mr. Fishbein cut you off.	
3	A. He provided a variety of services, including attending		3	Do you recall that exchange this morning?	
4	industry conferences on the west coast.		4	A. Yes.	
5	Q. And did he provide periodic reports to you and Mr. Newman?		5	Q. What is it that you were trying to say?	
6	A. He did.		6	A. I was trying to say that there was a specific time I	
7	Q. And how did those reports get transmitted?		7	remember he asked me if I used a BlackBerry instant messenger,	
8	A. Generally, on e-mail.		8	and he specifically made reference to the fact that that was	
9	Q. And who were they transmitted to?		9	not tracked by the company.	
10	A. I believe both myself and Todd.		10	Q. Do you recall when that conversation was?	
11	Q. And do you recall how often were those reports?		11	A. I don't recall a specific month, but I do recall it was	
12	A. Generally, every time there was a west coast conference		12	early on.	
13	that Todd or I did not attend, which was one or more times per		13	Q. Now, Mr. Fishbein also put up an e-mail, it's Defense	
14	quarter, again, that's just one example of what he did. He did		14	Exhibit 9845.	
15	other things as well.		15	MS. APPS: Mr. McLeod, do you mind putting that up.	
16	Q. You talked about Mr. Kanowitz, who provided the tracker		16	Can you just put up the portion that was admitted, which was	
17	reports.		17	the e-mail on March 21, 2009, at 2:09 p.m.	
18	Mr. Fishbein asked you a couple of those questions,		18	Can you just do that. Thank you very much.	
19	right?		19	Q. Mr. Fishbein asked a couple of questions about this	
20	A. Yes.		20	exchange between you and Mr. Ingel.	
21	Q. It was a document that was provided on a regular basis to		21	Who is Mr. Ingel?	
22	Mr. Newman, is that fair to say?		22	A. My stepfather.	
23	A. Todd and myself twice a week, yes.		23	Q. And he asked you about the top line which talks about you	
24	Q. With respect to the approval of these consultants, what was		24	losing some of your own money. You say: I can't deal with	
25	Mr. Newman's role?		25	that because I work too hard for it.	

<p>CBKMNEW6 Tortora - redirect Page 1265</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. But he didn't ask you about this next sentence and I want</p> <p>4 to ask you what it is you meant by the next sentence which</p> <p>5 says: Plus, we have proven system to make money, me doing</p> <p>6 research, him trading.</p> <p>7 A. That's the system in which Todd makes money -- Todd makes</p> <p>8 money for his book, we, meaning Todd and myself, or I send him</p> <p>9 research, more information, and he makes the trading decisions.</p> <p>10 Q. Now, Mr. Tortora, with respect to Intel, you got</p> <p>11 information while you're at Prudential from Intel, right?</p> <p>12 A. Yes.</p> <p>13 Q. And the person that gave that to you, what relationship did</p> <p>14 you have with that person?</p> <p>15 A. Friend of mine, Ariel Jaduszliwer.</p> <p>16 Q. When you were at Diamondback, you got information on Intel</p> <p>17 through Lacey Higgins.</p> <p>18 Do you recall that testimony?</p> <p>19 A. Yes.</p> <p>20 Q. What was your relationship with Lacey Higgins?</p> <p>21 A. Lacey was a friend of mine at Diamondback. We were also</p> <p>22 clients of Morgan Stanley.</p> <p>23 Q. Did Lacey Higgins talk to you about the relationship that</p> <p>24 she had with the contacts who were giving her information about</p> <p>25 Intel?</p>	<p>CBKMNEW6 Tortora - redirect Page 1267</p> <p>1 Q. Do you recall what it is you told the FBI very early on in</p> <p>2 this case about what Mr. Goyal told you about his contact?</p> <p>3 A. Yes, that he had -- I do recall and it was that he had a</p> <p>4 friend at Dell that provided him information.</p> <p>5 MS. APPS: One moment, your Honor.</p> <p>6 This is just the last series of questions, your Honor.</p> <p>7 Q. I am going to ask you about Defense Exhibit 972?</p> <p>8 THE COURT: 972.</p> <p>9 Q. And an exchange that you have with Mr. Adondakis. And this</p> <p>10 exchange takes place in February of 2009.</p> <p>11 Do you see that up there?</p> <p>12 A. Yes.</p> <p>13 Q. And there is an exchange there when you talk about Mr --</p> <p>14 can put that a little lower -- Mr. Fishbein asked you about</p> <p>15 something you said on February 20, 2009, about being dead</p> <p>16 wrong.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I remember.</p> <p>19 (Continued on next page)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>CBKMNEW6 Tortora - redirect Page 1266</p> <p>1 A. She had said it was a friend of hers at Intel.</p> <p>2 Q. Mr. Tortora, I just want to ask you about a couple --</p> <p>3 MS. APPS: One moment.</p> <p>4 Q. Mr. Fishbein asked you about a meeting that you had with</p> <p>5 the FBI in October of 2012. And he asked you in connection</p> <p>6 with that if you told the FBI, quote, that Mr. Goyal led you to</p> <p>7 believe his contact worked at Dell rather than Mr. Goyal told</p> <p>8 you that his contact worked at Dell.</p> <p>9 Do you recall those series of questions?</p> <p>10 A. Yes.</p> <p>11 Q. And then again, that it was 2012.</p> <p>12 Do you recall that the very first meeting you had with</p> <p>13 the agents in which you gave substance took place some time in</p> <p>14 2010, in November of 2010?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recall at that very early meeting telling the</p> <p>17 FBI that Goyal in fact told you that he spoke with his contact</p> <p>18 at Dell?</p> <p>19 MR. FISHBEIN: Objection.</p> <p>20 THE COURT: Grounds?</p> <p>21 MR. FISHBEIN: I think she should first ask whether he</p> <p>22 remembers what he said before she presents --</p> <p>23 THE COURT: Leading. Basically leading?</p> <p>24 MR. FISHBEIN: Yes.</p> <p>25 THE COURT: Sustained. Rephrase.</p>	<p>CBKFNEW7 Tortora - redirect Page 1268</p> <p>1 MS. APPS: Mr. McLeod, can you go a little bit lower</p> <p>2 on the screen? Thank you.</p> <p>3 Q. What is it that you were referring to when you talked</p> <p>4 about, when you said they're dead wrong.</p> <p>5 A. Which direction Dell stock would go on the quarter. Not</p> <p>6 the information Sandy provided.</p> <p>7 Q. And so for the quarter ending on November 20, 2008, was the</p> <p>8 information, was your recollection, what was your recollection</p> <p>9 about the accuracy of the information that Mr. Goyal had</p> <p>10 provided to you?</p> <p>11 A. That it was very accurate.</p> <p>12 Q. And in fact, if you look even for the quarter that's ending</p> <p>13 in February of 2009, if you could look at Government Exhibit</p> <p>14 280. Thank you. Thank you. You see here the date is</p> <p>15 2/27/2009.</p> <p>16 A. Yes.</p> <p>17 Q. And the second bullet point says, "January Q results what</p> <p>18 we thought REV, GM, OM, EPS," do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. What did you mean by that?</p> <p>21 A. That means for the previous quarter that Dell had reported</p> <p>22 that the information Sandy Goyal provided on revenue, gross</p> <p>23 margin, operating margin were accurate, as well as our</p> <p>24 deduction of earnings per share from that information that</p> <p>25 Sandy provided.</p>

CBKFNEW7	Tortora - redirect	Page 1269	CBKFNEW7	Tortora - recross	Page 1271
1	MS. APPS: Just one moment, your Honor. No further		1	A. It was interchangeable yes.	
2	questions.		2	Q. Did you call him on his cell phone on other occasions?	
3	THE COURT: Okay. Recross.		3	A. Yes, I did.	
4	MR. FISHBEIN: Yes, your Honor.		4	Q. Now, this number, do you know what that number is	
5	THE COURT: Hold on one second.		5	associated with?	
6	(Pause)		6	A. I believe Miss Apps said.	
7	RECROSS EXAMINATION		7	Q. Yes, Ms. Apps, I believe you said the stipulation said it's	
8	BY MR. FISHBEIN:		8	Neuberger Berman, right?	
9	Q. Mr. Tortora, do you have in front of you what Ms. Apps		9	THE COURT: Are you asking Ms. Apps or are you	
10	showed you at the beginning of the redirect, 2606A. It's an		10	asking --	
11	excerpt of the phone record of August 16, two pages. Perhaps		11	MR. FISHBEIN: There was a representation.	
12	we could get it put up on the screen. 2606A, it's an excerpt		12	THE COURT: I believe that was the stipulation.	
13	from the phone records. Is it possible to get it put up on the		13	MS. APPS: That's the stipulation.	
14	screen?		14	Q. So that's a central number for Neuberger Berman, right?	
15	A. I have that here.		15	A. Yes.	
16	MR. FISHBEIN: Our technology is gone. I'll try to		16	Q. And you know other people at Neuberger Berman, don't you?	
17	continue and explain as I go along.		17	A. I do know other individuals, yes.	
18	Q. Mr. Tortora, you were asked about a call on the morning of		18	Q. And you talked to Mr. Abbasi, for example, by phone on	
19	August 15 at 8:49 a.m., do you see it there?		19	occasion?	
20	A. Yes.		20	A. Yes.	
21	Q. This is the day that you met Sandy Goyal for lunch in the		21	Q. So you don't know who it is that called you on this	
22	afternoon, right?		22	occasion, right?	
23	A. Yes.		23	A. Not at this specific time, no.	
24	Q. And do you recall being shown a trading chart where Mr.		24	Q. Now, again, if we can get the trading records for the	
25	Newman started the short sales in the morning sometime around		25	morning of the 15th. That I think we have. Okay. So just so	
CBKFNEW7	Tortora - recross	Page 1270	CBKFNEW7	Tortora - recross	Page 1272
1	10 or 10:30, something like that, do you remember seeing that?		1	we're clear there was a short sale at 10:24 a.m., correct?	
2	A. If I recall, Mr. Fishbein, there was a single trade in the		2	A. Yes.	
3	morning and there was the remainder of the trades later that		3	Q. Now, do you see on the phone records any call between you	
4	afternoon.		4	and Mr. Newman prior to 10:24 a.m.?	
5	Q. That's right and we can all go back to the records but		5	A. On 8/15?	
6	there was the first trade in the morning and that's what Ms.		6	Q. Correct.	
7	Apps was asking about, okay, do you remember that?		7	A. And what's -- do you want to give me Mr. Newman's cell	
8	A. I do remember.		8	phone number? How does that work?	
9	Q. So that's why I'm focused on the morning. On August 15,		9	Q. Well, if you look at the next page, you identified his	
10	2008, 8:49 a.m., there's a call from, to your number, correct,		10	number at 3:10 at (617)817-1138, right?	
11	415-964, whatever, 02 -- ending in 4020, right?		11	A. No, no, your Honor, I don't believe I was the one who	
12	A. Yes.		12	identified an e-mail --	
13	Q. That's your number, correct?		13	Q. The parties have stipulated that that was Mr. Newman's	
14	A. Yes.		14	number, the 617 number. That's at 3:10 p.m. okay?	
15	Q. And the originating number is 212-476-9000, right?		15	A. Okay.	
16	A. Yes.		16	Q. So do you see a call to Mr. Newman on the morning of	
17	Q. That's not Sandy Goyal's cell phone, right?		17	August 15 before 10:24 when he made the short sale?	
18	A. That's correct.		18	A. There's numbers on here that I -- so if you're asking me if	
19	Q. You did communicate with Mr. Goyal on a cell phone,		19	I see a call to Mr. Newman to that number which you just	
20	correct?		20	pointed out which I believe we discussed was Mr. Newman's cell	
21	A. In addition to the office --		21	phone number, I do not, but that was not my only method of	
22	Q. At other times?		22	communication with Mr. Newman.	
23	A. Yes, yes.		23	Q. Do you recognize any of these other numbers -- as you sit	
24	Q. We've seen other calls where you called Mr. Goyal and it		24	here now can you testify that any of these other numbers are	
25	was on his cell phone, right?		25	Mr. Newman's numbers on the morning of the 15th?	

CBKFNEW7	Tortora - recross	Page 1273	CBKFNEW7	Tortora - recross	Page 1275
1 A. I don't remember what Mr. Newman's office number was, for			1 A. Correct.		
2 instance.			2 Q. If you could look at Government Exhibit 4002, which is the		
3 Q. Do you recall speaking to Mr. Newman on the morning of the			3 Goldman Sachs analyst report after the August announcement. Do		
4 15th?			4 you have it?		
5 A. I don't recall if I spoke to him that morning.			5 A. I do.		
6 Q. Now, you were shown a policy, a Diamondback policy			6 Q. You see this is an analyst report after Dell announced its		
7 concerning the use of expert networks. Do you recall that?			7 results on August 28, correct?		
8 A. Yes.			8 A. Yes.		
9 Q. And when is it that you recall that policy going into			9 Q. And as we've discussed, there were gross margin issues,		
10 effect, namely the policy concerning experts who work at			10 right, and that's what you testified to with respect to Dell		
11 companies.			11 that quarter?		
12 A. Which policy are you referring to?			12 A. Yes.		
13 Q. Ms. Apps showed you a policy. She read you language. I			13 Q. Now, if you look at the first paragraph which Ms. Apps		
14 can read it to you again --			14 pointed you to do you see about half, third of the way down		
15 MS. APPS: It has a date on it.			15 there's a sentence, quote, "Despite another solid top line beat		
16 A. The compliance policy?			16 Dell's turnaround took a step backward July quarter with gross		
17 Q. The compliance policy. But I'm asking for your			17 and operating margin taking a hit due to overly aggressive		
18 recollection, Mr. Tortora.			18 pricing." Do you see that?		
19 A. And, I'm sorry, what was the question again?			19 A. Yes.		
20 Q. The question, okay. Put that to the side. Do you recall			20 Q. And you understood, Mr. Tortora, that analysts attributed		
21 at the time when Diamondback's policy concerning the use of			21 the gross margin issues in August to Dell's overly aggressive		
22 expert networks changed?			22 pricing, correct?		
23 A. I do.			23 A. Are you asking me if that's my interpretation of what David		
24 Q. When did that occur, to your recollection?			24 Bailey's saying here?		
25 A. Post Galleon.			25 Q. Yes.		
CBKFNEW7	Tortora - recross	Page 1274	CBKFNEW7	Tortora - recross	Page 1276
1 Q. And Galleon was when?			1 A. Yes, the line you just read, that appears, David Bailey		
2 A. Late 2009.			2 appears to be pointing that out as a primary driver.		
3 Q. So during 2008 you don't recall that policy being in			3 Q. And aggressive pricing means the prices that Dell is		
4 effect, right?			4 getting for its computers, right?		
5 A. Mr. Fishbein, you asked me if I recall there was a period			5 A. The price they're offering.		
6 of time when the policy changed?			6 Q. Yes, that's what -- the price they're selling their		
7 Q. Okay, fair enough. What did it change from and what did it			7 computers for?		
8 change to?			8 A. Selling the computers for, yes.		
9 A. The part that I recall, and again, I don't remember if the			9 Q. And that's the subject of Mr. Kanowitz' tracker?		
10 actual written policy changed, but I was told --			10 A. That was one of the subjects of Mr. Kanowitz' tracker, yes.		
11 Q. Right.			11 Q. In fact you pointed out to Mr. Newman before the August		
12 A. -- that at that time you could no longer use the expert			12 earnings report that the Kanowitz data showed aggressive		
13 networks to speak directly to a public company employee,			13 pricing, right?		
14 regardless of what public company that employee -- what company			14 A. Yes, before the earnings reports for HP and Dell I showed		
15 that employee worked for. If it was a public company you could			15 that, I pointed out that there was a consumer PC price war if		
16 not speak to them directly through the expert networks.			16 you remember, yes.		
17 Q. So the change was that you could no longer use these expert			17 Q. Now, the last questions that Ms. Apps asked you were about		
18 networks to speak to an employee of a public company, correct?			18 your comment that you were dead wrong in the quarter ended		
19 A. Yes.			19 November of 2008. Do you remember that?		
20 Q. And that change, as far as you understood, occurred after			20 A. Yes.		
21 Galleon in the late fall of 2009, correct?			21 Q. And you said that dead wrong referred to the way the stock		
22 A. Yes.			22 price moved? Did I understand that right?		
23 Q. And so when you were having these calls with the PGR			23 A. Yes.		
24 experts in 2008 and the 2009 up until Galleon, you were not			24 Q. Now, we also saw e-mails to the effect of good call. Do		
25 aware of any policy change such as the one you just described?			25 you remember that?		

CBKFNEW7	Tortora - recross	Page 1277	CBKFNEW7	Tortora - redirect	Page 1279
1	A. Yes.		1	the Thanksgiving holiday. So we'll turn to another witness.	
2	Q. And do those refer to the way the stock price moved?		2	So don't discuss the case. Keep an open mind. Bring your	
3	A. Which IM's or e-mails are you specifically referring to?		3	notebooks with you to the jury room and there Mr. Feith will	
4	Q. You were shown some e-mails from Mr. Adonakis, from		4	collect them. Don't discuss the case, but have a nice evening.	
5	Mr. Horvath following the various quarters where they said to		5	Okay, thanks. All rise for the jury.	
6	you good call. Do you remember that?		6	(Jury excused)	
7	A. Yes.		7	(Continued on next page)	
8	Q. And were they simply saying that you had made a good call		8		
9	as to where you thought the stock price was going to go?		9		
10	A. I don't know if they were, whether they're referring to the		10		
11	stock price movement, the information or both. I could tell		11		
12	you --		12		
13	Q. What did you understand?		13		
14	A. Again, I don't -- it was either the stock price move, the		14		
15	information -- my understanding it was both, but again that's		15		
16	just an extrapolation.		16		
17	Q. So you assume if they said good call to you that they were		17		
18	congratulating you at least in part for the information you		18		
19	were providing, is that your understanding?		19		
20	A. Yes.		20		
21	Q. But when they said you were dead wrong it's your		21		
22	understanding that they were not referring to the information?		22		
23	A. That's correct, because the information was accurate.		23		
24	MR. FISHBEIN: That's all I have.		24		
25	THE COURT: Mr. Weingarten? Nothing. Any redirect?		25		
CBKFNEW7	Tortora - recross	Page 1278	CBKFNEW7	Tortora - redirect	Page 1280
1	MS. APPS: One second.		1	(In open court; jury not present)	
2	(Pause)		2	THE COURT: All right, have a seat. Tomorrow who is	
3	REDIRECT EXAMINATION		3	the next witness?	
4	BY MS. APPS:		4	MS. APPS: Mark Hadlock. He's a Diamondback employee.	
5	Q. Mr. Tortora, even before the policy changed at Diamondback,		5	It should be done quickly.	
6	did you understand -- withdrawn. Even before the policy		6	THE COURT: And then?	
7	changed at Diamondback after Galleon as Mr. Fishbein just		7	MS. APPS: Sandy Goyal.	
8	referenced, did you understand that you couldn't speak to a		8	THE COURT: You anticipate that will take us through	
9	company like Dell to get information confidential about Dell		9	the day?	
10	from that individual?		10	MR. FISHBEIN: May I ask if there will be cross of	
11	MR. FISHBEIN: Objection. Leading.		11	Mr. Goyal?	
12	THE COURT: Sustained. Rephrase.		12	THE COURT: Do you think the direct will take us	
13	Q. Before the policy changed, Mr. Tortora, what did you		13	through the end of the day?	
14	understand Diamondback policy to prohibit when you were		14	MR. TARLOWE: Yes.	
15	speaking to a company, public company insider?		15	THE COURT: It's your witness, Mr. Tarlowe?	
16	A. That you were able to talk to a company insider but you		16	MR. TARLOWE: Yes.	
17	could not get confidential information.		17	THE COURT: If we finish a few minutes before 12:30	
18	MS. APPS: Nothing further.		18	I'll just end it there, get Mr. Weingarten home.	
19	THE COURT: Okay. All right, Mr. Tortora, you can		19	(Adjourned to November 21, 2012 at 9:30 a.m.)	
20	step down. Thank you.		20		
21	(Witness excused)		21		
22	THE COURT: All right, ladies and gentlemen. I think		22		
23	we're going to break there for the day. I have another matter		23		
24	that I'm going to try to get in. So we're going to pick up		24		
25	tomorrow at 9:30. We'll go till 12:30 and then we'll break for		25		

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In The Matter Of:
UNITED STATES OF AMERICA, v
TODD NEWMAN,

November 21, 2012

SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330

<p>CBLMNEW1 Page 1284</p> <p>1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 2 -----x</p> <p>3 UNITED STATES OF AMERICA, 4 v. 12 Cr. 121 (RJS) 5 TODD NEWMAN, 6 ANTHONY CHIASSON, 7 Defendants. 8 -----x</p> <p>9 New York, N.Y. November 21, 2012 9:35 a.m.</p> <p>10</p> <p>11 Before:</p> <p>12 HON. RICHARD J. SULLIVAN, 13 District Judge</p> <p>14 APPEARANCES</p> <p>15 PREET BHARARA 16 United States Attorney for the Southern District of New York 17 ANTONIA APPS 18 JOHN ZACH 19 RICHARD TARLOWE Assistant United States Attorneys</p> <p>20 SHEARMAN & STERLING Attorneys for Defendant Newman 21 BY: STEPHEN R. FISHBEIN JOHN A. NATHANSON</p> <p>22 STEPTOE & JOHNSON Attorneys for Defendant Chiasson 23 BY: REID WEINGARTEN ERIK KITCHEN 24 MICHELLE LEVIN -and- 25 MORVILLO LLP</p>	<p>CBLMNEW1 Page 1286</p> <p>1 that?</p> <p>2 Has anybody read anything interesting lately?</p> <p>3 MR. MORVILLO: I would ask your Honor to ask whether 4 anyone read the articles related to the insider cases yesterday 5 without mentioning names. If no one has read them, that is 6 fine. If people read them and we got to the end, it would not 7 be under your Honor's order not to have read those articles. 8 THE COURT: Not to read touching anything on this 9 case. If they see the name of either of the defendants, they 10 should, under my instructions, be telling me that they read it. 11 MR. MORVILLO: But those names might not come to the 12 very end of the article. They have may have read all about 13 SAC, they may have all about this case, they may have read 14 about John Horvath, SAC, other cases, Galleon, et cetera, et 15 cetera, and only seen Mr. Chiasson's name in the last paragraph 16 or may have stopped halfway through it. Whether there has been 17 any discussion with Jon Horvath or with SAC, anybody who has 18 read it. 19 THE COURT: One juror has approached Mr. Feith, 20 Mr. Pendrock, and indicated he had seen an article and did not 21 read it. So I think at least some of them are I think savvy 22 enough to understand the connection and be scrupulous with 23 respect to my instructions. 24 Anybody else have a view as to what we ought to do? 25 MS. APPS: Your Honor, I think the jury has shown that</p>
<p>CBLMNEW1 Page 1285</p> <p>1 (Trial resumed; jury not present)</p> <p>2 THE COURT: Anything we need to discuss before the 3 jury comes out?</p> <p>4 Mr. Morvillo, you had an issue?</p> <p>5 MR. MORVILLO: Yesterday the U.S. Attorney's Office 6 charge Matthew Martoma from SAC. It's been all over the press, 7 New York Times, Wall Street Journal, Internet, all over the 8 press. It's linked directly to Mr. Chiasson. It's linked to a 9 lot of the names that have come up, like Jon Horvath, SAC 10 Capital. 11 THE COURT: How is it linked to them? 12 MR. MORVILLO: The newspaper articles. 13 THE COURT: They reference the other cases? 14 MR. MORVILLO: Mention this case. Mention the fact 15 that this case is derivative of Operation Perfect Hedge, which 16 is the operation the U.S. Attorney's Office and the FBI ran and 17 that resulted in the indictments here. We think that you need 18 to make discrete inquiry of the jury to see if anybody read 19 those articles because those articles implicate, discuss this 20 trial and discuss the fact that Mr. Chiasson is a graduate of 21 SAC Capital and that multiple people from SAC Capital have been 22 charged, multiple people have pled guilty, and John Horvath, 23 SAC is all going to come up. We opened on it and we think we 24 need to understand whether anybody has read those articles. 25 THE COURT: How do you expect me to discretely do</p>	<p>CBLMNEW1 Page 1287</p> <p>1 it is very careful with respect to reading articles. One 2 possible solution would be just to remind the jury of that and 3 they should steer clear from this point of any kind of insider 4 trading articles. I am not sure that we really need to go and 5 voir dire the jury here. It's just one option for your Honor's 6 consideration. 7 THE COURT: Mr. Fishbein, do you want to say 8 something? 9 MR. FISHBEIN: No. 10 THE COURT: I'm inclined to just say that there was an 11 announcement yesterday relating to a different case. There 12 were some articles written, some of which may have referenced 13 this case. Mr. Pendrock mentioned that he had seen such an 14 article and didn't read it. Thank you. That's what you are 15 supposed to do. If anyone else has seen an article or read an 16 article that did touch on this case, they should let us know, 17 tell Mr. Feith. I am not going to make them raise their hands 18 in open court. 19 That should do it, Mr. Morvillo? 20 MR. MORVILLO: Yes. 21 THE COURT: One scheduling issue. Ms. Gallo, I don't 22 remember what juror number she is, has an appointment with the 23 New York Department of Education related to the placement of a 24 child. It's something that's been in the works for a long time 25 and something that is scheduled for next Wednesday in the</p>

<p>CBLMNEW1 Page 1288</p> <p>1 morning and is something that she is loathed to reschedule 2 because timing can be very sensitive for those things related 3 to a placement of a special education program. So I'm inclined 4 to allow her to go to that. 5 It actually kind of works out all right because I had 6 previously scheduled to be on a PLI panel related to trials and 7 I'm on a panel with Mary Jo White and Judge Cote and some 8 others. I was going to try to bow out of that. 9 What we will do, I will tell the jury to be here at 10 12:30 and we will go from 12:30 to 5:30 that day. That's what 11 I'm inclined to do. 12 Does anybody have a view otherwise? 13 I'll tell that juror today so she knows not to sweat 14 it. If we have time, I'll tell the rest of the jury that's 15 what we are doing. Otherwise, I will tell them Monday. 16 MR. WEINGARTEN: Have you decided for sure next 17 Friday, a week from Friday? 18 THE COURT: I have such a full calendar because of the 19 Hurricane that I think we are not going to sit. I'm hopeful 20 that by sort of Monday, Tuesday, we will have a better sense of 21 how we are doing, if we are making up time for the other 22 witnesses. Right now we spent a week on one witness. I think 23 we can revisit that, but I think for now I'm planning not to 24 sit Friday. 25 MR. WEINGARTEN: I want to know whether to schedule</p>	<p>CBLMNEW1 Page 1290</p> <p>1 mentioned in this case or any of the parties in this case, let 2 Mr. Feith know that and maybe I'll follow up with you. If you 3 didn't see it or didn't read anything, that's fine. 4 We are now going to move on to the next witness. It's 5 the government's case. They are going to call their next 6 witness. 7 Ms. Apps, who does the government call? 8 MS. APPS: The government calls Mr. Mark Hadlock. 9 MARK HADLOCK, 10 called as a witness by the Government, 11 having been duly sworn, testified as follows: 12 DIRECT EXAMINATION 13 BY MS. APPS: 14 Q. Mr. Hadlock, where did you go to school? 15 A. University of Notre Dame. 16 Q. Did you graduate with a degree? 17 A. Yes. Biology. 18 THE COURT: Notre Dame? 19 THE WITNESS: Yes. 20 THE COURT: You guys are riding high these days. 21 Saturday could be tough. It wouldn't be appropriate for me to 22 take a position. 23 Q. What year did you graduate from Notre Dame? 24 A. 1981. 25 Q. Are you familiar with an entity called Diamondback Capital</p>
<p>CBLMNEW1 Page 1289</p> <p>1 stuff myself. 2 THE COURT: I don't think we will sit on the 30th. 3 MR. MORVILLO: Could we take down the mug shots, 4 unless they are using them for Mr. Hadlock. 5 THE COURT: Mr. Hadlock is here? 6 MS. APPS: Yes. 7 THE COURT: Let's get him up here. 8 Dan, you can bring in the jury. 9 (Jury present) 10 THE COURT: Thanks for being on time. We had a couple 11 of things we were discussing. 12 I wanted to just remind you again about my 13 instructions not to read anything about this case. And 14 yesterday, I gather, there was a news story or a news stories 15 related to a different case, an indictment that was handed 16 down. Some of the articles may have referenced other cases, 17 including this one. Mr. Pendrock had indicated to Mr. Feith 18 that he had seen an article and did not read it, which is 19 great. You did exactly what I've asked you to do. So thank 20 you for doing that. Others during the course of the trial have 21 brought to Mr. Feith's attention articles that they came across 22 that they followed my instructions, didn't read, and then 23 mentioned it to Mr. Feith. 24 You don't have to tell me now. At the next break if 25 anybody saw an article that mentioned anybody who has been</p>	<p>CBLMNEW1 Hadlock - direct Page 1291</p> <p>1 Management? 2 A. Yes. 3 Q. How are you familiar with Diamondback Capital Management? 4 A. I was employed there. 5 Q. When did you start working for Diamondback Capital 6 Management? 7 A. July 2005. 8 Q. Can you briefly describe the jobs you had between 9 graduating from Notre Dame in 1981 and joining Diamondback 10 Capital Management in 2005? 11 A. Yes. I worked six years at J.C. Penney in their quality 12 assurance lab. 13 I then left and started a sales career in hosiery with 14 several hosiery manufacturers up until 1996. 15 In 1996, I worked as a consultant for a small 16 registered investment advisor for a year and a half. 17 I then went to C.E. Unterberg, Towbin, which was a 18 small boutique investment bank that had a broker dealer and 19 investment advisory division, published research. It was a 20 full service investment bank. Spent nine years there. And 21 then was hired at Diamondback in July of 2005. 22 Q. And what was your position at C.E. Unterberg, Towbin? 23 A. I was their chief administrative and chief compliance 24 officer by the time I left. I had held various positions 25 prior.</p>

<p>CBLMNEW1 Hadlock - direct Page 1292</p> <p>1 Q. What position did you have when you first joined 2 Diamondback Capital Management? 3 A. I was hired to be their chief administrative and chief 4 compliance officer. 5 Q. And how long were you at Diamondback Capital Management? 6 A. Up until May 2010. 7 Q. Did you hold those positions of chief compliance officer 8 and chief administrative officer for the entire time that you 9 were at Diamondback or did they in some way change? 10 A. I was the chief administrative officer the entire time. I 11 relinquished my role as chief compliance officer in December of 12 2009. 13 Q. Now, what kind of entity is Diamondback Capital Management? 14 A. Diamondback Capital Management is a registered investment 15 advisor managing a hedge fund. 16 Q. What kind of investors did the hedge fund have? 17 A. All different types. Pension and endowments, high net 18 worth individual, fund to funds, family office. 19 Q. What was the structure of Diamondback Capital Management 20 investment advisor you mentioned? 21 A. The Diamondback model was similar to the SAC model. It had 22 multiple portfolio management teams. Each portfolio management 23 team managed a sum of money. Each portfolio management team 24 was an expert in a sector of the S&P 500, for instance, 25 technology, energy, financials, TNT, whatever the sector was.</p>	<p>CBLMNEW1 Hadlock - direct Page 1294</p> <p>1 Government Exhibit 2254? 2 A. Yes. 3 Q. And how are you familiar with that form? 4 A. It's an employment application, all employees completed 5 one. 6 Q. Did that fall within your purview of responsibilities as a 7 chief administrative officer? 8 A. Yes. 9 Q. And whose employment application is that? 10 A. Todd Newman. 11 MS. APPS: The government offers 2254. 12 MR. NATHANSON: No objection. 13 THE COURT: Government Exhibit 2254 is received. 14 (Government's Exhibit 2254 received in evidence) 15 Q. Mr. Hadlock, the top part of that document has been blown 16 up on the screen, and it's cut off a little bit at the top, but 17 there is an address, One Landmark Square-15th floor, Stamford, 18 Connecticut. 19 Do you see that? 20 A. Yes. 21 Q. Are you familiar with that address? 22 A. Yes. 23 Q. What address is that? 24 A. It's the address of Diamondback Capital. 25 Q. It indicates there the name Todd Newman.</p>
<p>CBLMNEW1 Hadlock - direct Page 1293</p> <p>1 Q. You mentioned something there. I think you said SAC model? 2 A. SAC Capital was one the first hedges that had this 3 multimanage approach. 4 Q. How was capital allocated amongst the portfolio managers? 5 A. The partners of the firm allocated a portion of the total 6 investors capital. 7 Q. Approximately how many portfolio managers were there in 8 2008 and 2009? 9 A. I don't know the exact number. I would say approximately 10 40 by the end of 2009. 11 Q. What were your responsibilities at Diamondback as the chief 12 administrative officer? 13 A. Mostly, back office function. Human resources, oversee 14 human resources, IT, investor relations, anything pretty much 15 not related to trading or finance. We have a CFO. 16 Q. Just to be clear, IT refers to what? 17 A. Information technology. 18 Q. And who, if anyone, assisted you in carrying out the human 19 resource side of your administrative officer responsibilities? 20 A. Cathy Magee. 21 Q. Could you take a look at what has been marked for 22 identification as Government Exhibit 2254. 23 MS. APPS: May I approach, your Honor? 24 THE COURT: Yes. 25 Q. Mr. Hadlock, are you familiar with the form that is</p>	<p>CBLMNEW1 Hadlock - direct Page 1295</p> <p>1 Do you see that? 2 A. Yes. 3 Q. The date on the top there, what is that date? 4 A. March 1, 2006. 5 Q. If you could turn to the second page of this document, 6 there is a heading work experience about two-thirds of the way 7 down the page. 8 Do you see that? 9 A. Yes. 10 Q. And it indicates there an employer Tudor Investments. 11 Do you see that? 12 A. Yes. 13 Q. What is Tudor Investments? 14 A. A hedge fund. 15 Q. And can you tell us what the dates of employment were for 16 Tudor Investments for Mr. Newman? 17 A. March 25, 2002 through February 15, 2006. 18 Q. And this portion of the application continues on to the 19 next page, if you could turn the page, Mr. Hadlock. And the 20 top box indicates an employer Sirios Capital Management. 21 Are you familiar with that entity? 22 A. No. 23 Q. Do you see on the right-hand side there is the words type 24 of business? 25 A. Yes.</p>

<p>CBLMNEW1 Hadlock - direct Page 1296</p> <p>1 Q. Can you read that?</p> <p>2 A. Investments.</p> <p>3 Q. And below that has dates of employment. What are the dates</p> <p>4 of employment written there?</p> <p>5 A. July 1, 1999 to January 31, 2006.</p> <p>6 THE COURT: 2006?</p> <p>7 THE WITNESS: I'm sorry. '99 to 2002.</p> <p>8 Q. In the last box under this section, Mr. Hadlock, the</p> <p>9 employer listed there is Merrill Lynch.</p> <p>10 Are you familiar with that entity?</p> <p>11 A. Yes.</p> <p>12 Q. What is Merrill Lynch, or was Merrill Lynch?</p> <p>13 A. An investment bank.</p> <p>14 Q. And what are the dates of employment that are listed in</p> <p>15 that document there?</p> <p>16 A. March 15, 1996 to June 30, 1999.</p> <p>17 Q. Mr. Hadlock, could you turn to what's been marked as</p> <p>18 Government Exhibit 2257.</p> <p>19 Do you recognize that document?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 A. Todd Newman's offer letter.</p> <p>23 Q. And if you look on the third page of this document, do you</p> <p>24 recognize any of the signatures on that page?</p> <p>25 A. Yes.</p>	<p>CBLMNEW1 Hadlock - direct Page 1298</p> <p>1 million?</p> <p>2 A. Capital was allocated to each portfolio manager based upon</p> <p>3 the overall assets of the master fund.</p> <p>4 Q. And if you could take a look at what's been marked for</p> <p>5 identification as Government Exhibit 2259.</p> <p>6 Do you recognize that document?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. A revised employment letter.</p> <p>10 Q. What is the date?</p> <p>11 A. December 22, 2008.</p> <p>12 MS. APPS: The government offers 2259.</p> <p>13 MR. NATHANSON: No objection.</p> <p>14 THE COURT: Government Exhibit 2259 is received.</p> <p>15 (Government's Exhibit 2259 received in evidence)</p> <p>16 Q. Again, Mr. Hadlock, just directing your attention to the</p> <p>17 first page, what does it say about Mr. Newman's position?</p> <p>18 A. Again, he's a portfolio manager.</p> <p>19 Q. Now, Mr. Hadlock, this agreement starts by saying that</p> <p>20 Mr. Newman is offered a position at Diamondback advisors CT</p> <p>21 LLC. And if you recall in the exhibit we just looked at it was</p> <p>22 Diamondback Capital Management LLC that was making the offer.</p> <p>23 Do you know why there was a change in the entity's</p> <p>24 name like that?</p> <p>25 A. Yes.</p>
<p>CBLMNEW1 Hadlock - direct Page 1297</p> <p>1 Q. Which one do you recognize?</p> <p>2 A. My own.</p> <p>3 MS. APPS: The government offers 2257.</p> <p>4 MR. NATHANSON: No objection, your Honor.</p> <p>5 THE COURT: Government Exhibit 2257 is received.</p> <p>6 (Government's Exhibit 2257 received in evidence)</p> <p>7 Q. Mr. Hadlock, I want to draw your attention to the first</p> <p>8 paragraph on the first page. What does that say about the</p> <p>9 position that Mr. Newman was being offered by Diamondback</p> <p>10 Capital Management LLC?</p> <p>11 A. He was being hired as a portfolio manager.</p> <p>12 Q. Just to be clear, Diamondback Capital Management LLC,</p> <p>13 that's the investment advisor, is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. If you can turn in this document to this appendix. And if</p> <p>16 you could look at the appendix, Mr. Hadlock. What does this</p> <p>17 document say about the type of stocks Mr. Newman would be</p> <p>18 trading?</p> <p>19 A. Mostly, a technology portfolio.</p> <p>20 Q. And that's the first paragraph there on the screen?</p> <p>21 A. Correct.</p> <p>22 Q. And what does this document say about the amount of money</p> <p>23 that Mr. Newman would be managing when he started in 2006?</p> <p>24 A. He was given a book of \$100 million to manage.</p> <p>25 Q. Again, what does that mean, to be given a book of \$100</p>	<p>CBLMNEW1 Hadlock - direct Page 1299</p> <p>1 Q. And what was the reason?</p> <p>2 A. The firm in 2008 decided to open an alternate location in</p> <p>3 New York City due to legal and tax reasons. They wanted to</p> <p>4 create affiliates. So Diamondback Advisors Connecticut LLC was</p> <p>5 the Connecticut office, and Diamondback Advisors NY, New York,</p> <p>6 was our New York City office.</p> <p>7 Q. As far as you are aware, did the change in the name of the</p> <p>8 legal entity have any significance for the purposes of the</p> <p>9 day-to-day responsibilities of the portfolio managers?</p> <p>10 A. They didn't.</p> <p>11 Q. If you could turn on this document to page 7 of the</p> <p>12 document. It's headed definitions and trading account terms.</p> <p>13 And there is a section there starting with buying power.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What does that say about the amount of money that</p> <p>17 Mr. Newman was allocated at this time?</p> <p>18 A. That it increased to 250 million from 100.</p> <p>19 Q. And that was the size of his book, essentially?</p> <p>20 A. Correct.</p> <p>21 Q. Now, does this agreement address Mr. Newman's compensation?</p> <p>22 A. Yes.</p> <p>23 Q. What page is that?</p> <p>24 A. It would be on page 4.</p> <p>25 MS. APPS: Mr. Hoffman, if you could blow up paragraph</p>

<p>CBLMNEW1 Hadlock - direct Page 1300</p> <p>1 4 on page 4.</p> <p>2 Q. Mr. Hadlock, can you explain what this means in terms of</p> <p>3 how Mr. Newman was compensated while he was at Diamondback?</p> <p>4 A. Not from that paragraph.</p> <p>5 Q. Do you know how Mr. Newman was compensated at Diamondback?</p> <p>6 A. Yes. Paragraph 2 talks about how much he would be paid on</p> <p>7 net profits.</p> <p>8 Q. Can you explain how Mr. Newman was compensated? How did it</p> <p>9 work?</p> <p>10 A. The portfolio manager was paid based upon the profits that</p> <p>11 he made in his book. So in Mr. Newman's case he made 15</p> <p>12 percent on net performance below 15 percent, and he made 20</p> <p>13 percent on profits above 15 percent.</p> <p>14 Q. When you talk about net performance, what do you mean?</p> <p>15 A. In this particular structure portfolio managers are</p> <p>16 compensated based upon their net profits. So they are paid a</p> <p>17 salary, but their salary is basically considered a draw, an</p> <p>18 advance. If they have team members, they are responsible for</p> <p>19 paying their team members out of their profit, as well as</p> <p>20 certain other expenses.</p> <p>21 Q. When you say team members?</p> <p>22 A. Analysts, traders, secretaries.</p> <p>23 Q. Can you just sort of give us a simple example. If you had,</p> <p>24 for example, \$100 million book and you made a profit of 20</p> <p>25 percent or so, can you explain how the compensation would work</p>	<p>CBLFNEW2 Hadlock - direct Page 1302</p> <p>1 Q. And what is that?</p> <p>2 A. A summary of the compensation amounts for years 2007</p> <p>3 through 2009.</p> <p>4 Q. And before testifying today, did you compare the numbers in</p> <p>5 this chart for the years to the numbers that were on the W-2</p> <p>6 statements that you saw in Government Exhibit 2262?</p> <p>7 A. I did.</p> <p>8 Q. And the numbers listed on this chart in 95, do they</p> <p>9 accurately state the compensation according to the W-2's?</p> <p>10 A. Yes.</p> <p>11 MS. APPS: The government offers 95.</p> <p>12 MR. NATHANSON: No objection.</p> <p>13 THE COURT: 95 is received.</p> <p>14 (Government's Exhibit 95 received in evidence)</p> <p>15 THE COURT: You're not offering 2262.</p> <p>16 MS. APPS: Correct, your Honor, although -- one</p> <p>17 moment, your Honor. We have a little technical difficulty.</p> <p>18 One second. Apparently, your Honor, we don't have it on the</p> <p>19 electronic hookup. Can I just publish it to the jury the old</p> <p>20 fashioned way, just to show them --</p> <p>21 Q. You know what, Mr. Hadlock, why don't you do this? Why</p> <p>22 don't you read the numbers?</p> <p>23 A. Sure. From the W-2's or from the schedule?</p> <p>24 Q. From the schedule. What was Mr. Newman's compensation for</p> <p>25 2007?</p>
<p>CBLMNEW1 Hadlock - direct Page 1301</p> <p>1 for Mr. Newman?</p> <p>2 A. On 100 million, if you made 20 percent, then he would have</p> <p>3 made \$20 million in gross profit. You would reduce his profit</p> <p>4 down by expenses. And then he would be paid the requisite</p> <p>5 percentage in his offer letter. If you made 20 million and it</p> <p>6 netted down to 15 million, because he had to pay everybody,</p> <p>7 then he would be paid 15 percent of the 15 million.</p> <p>8 Q. If it netted to 20 percent?</p> <p>9 A. Or 20 percent, if profit was over 15 percent. So in that</p> <p>10 case it would be 20 percent.</p> <p>11 Q. Now, Mr. Hadlock, can you take a look at what's been marked</p> <p>12 for identification as Government Exhibit 2662.</p> <p>13 What are those documents?</p> <p>14 A. W2 forms.</p> <p>15 Q. For whom?</p> <p>16 A. Todd Newman.</p> <p>17 Q. For what years?</p> <p>18 A. For 2007, 2008, 2009.</p> <p>19 Q. And did Diamondback Capital maintain copies of W2s for</p> <p>20 employees at any particular point in time?</p> <p>21 A. Yes.</p> <p>22 Q. Mr. Hadlock, could you also take a look in your binder at</p> <p>23 what's been marked for identification as Government Exhibit 95.</p> <p>24 A. Yes.</p> <p>25 (Continued on next page)</p>	<p>CBLFNEW2 Hadlock - direct Page 1303</p> <p>1 A. 2007, \$3,354,224; 2008, \$3,337,040; 2009, \$3,560,690.</p> <p>2 Q. Now, Mr. Hadlock, coming to your responsibilities as chief</p> <p>3 compliance officer while you were at Diamondback, what did</p> <p>4 those responsibilities include?</p> <p>5 A. Creating and maintaining a registered investment advisor</p> <p>6 compliance program.</p> <p>7 Q. And what did that involve?</p> <p>8 A. Writing a compliance manual -- identifying the risks of the</p> <p>9 firm, writing a compliance manual and making sure policies and</p> <p>10 procedures that were required of a registered investment</p> <p>11 advisor were put in place, creating a culture of compliance</p> <p>12 within the firm, making sure people followed the compliance</p> <p>13 program.</p> <p>14 Q. And was there any training in compliance at Diamondback?</p> <p>15 A. Yes.</p> <p>16 Q. How often was the training?</p> <p>17 A. Training occurred at multiple times. When you were first</p> <p>18 employed at Diamondback you went through your human resources</p> <p>19 on-boarding process, but you also went through compliance</p> <p>20 training. You were also required to attend an annual training</p> <p>21 seminar required by everyone in the firm.</p> <p>22 Q. What if anything did compliance do to insure that employees</p> <p>23 attended the seminar?</p> <p>24 A. The seminar was located -- I'm sorry, let me think about</p> <p>25 that. What did we do. Employees came to the seminar. They</p>

<p>CBLFNEW2 Hadlock - direct Page 1304</p> <p>1 had to sign in because they were required to go. If they 2 didn't sign in, then they were required to watch the video. 3 All compliance training was taped. 4 Q. Could you take a look at what's being marked for 5 identification as Government Exhibit 2261? Do you recognize 6 that document? 7 A. Yes. 8 Q. What is it? 9 A. A notification from compliance, a response to a 10 notification from compliance about the annual training. 11 Q. What is the date? 12 A. April 8, 2008. 13 Q. And the notification from compliance, who from compliance 14 sent that out? 15 A. Rebecca Sheinberg. 16 Q. Who is Rebecca Sheinberg? 17 A. She was a compliance officer within the department. 18 Q. And she worked for you? 19 A. Correct. 20 Q. Was she an attorney? 21 A. Yes. 22 MS. APPS: Government offers 2261. 23 MR. NATHANSON: No objection. 24 THE COURT: All right, Government Exhibit 2261 is 25 received.</p>	<p>CBLFNEW2 Hadlock - direct Page 1306</p> <p>1 Q. It's the second page of the exhibit, I beg your pardon. 2 You see there's an e-mail from you. Is that an e-mail that you 3 sent to the firm? Withdrawn. Is that the type of e-mail that 4 you would send to the firm regarding compliance? 5 A. Right. 6 Q. And just coming back to the first page, then, just 7 publishing for the record the top portion of the e-mail from 8 Mr. Todd Newman dated April 8, 2008 to Rebecca Sheinberg and 9 Mr. Newman writes "completed." 10 Now, Mr. Hadlock, if you could look at what's been 11 marked for identification as Government Exhibit 2251. 12 A. A? Yes. 13 Q. Actually, if you could just look at 2251, not the A. 14 A. Okay. 15 Q. What is that document? 16 A. The cover page of our compliance manual. 17 Q. And if you could turn to the second page? 18 A. Mm-hmm. 19 Q. What does it indicate that this document, this particular 20 document is? 21 A. The policies and procedures to prevent insider trading. 22 Q. Is this a portion of Diamondback's compliance manual? 23 A. Yes. 24 Q. What is the date? 25 A. December 1, 2005.</p>
<p>CBLFNEW2 Hadlock - direct Page 1305</p> <p>1 (Government's Exhibit 2261 received in evidence) 2 Q. Mr. Hadlock, if you could first look at the e-mail starting 3 one-third of the way down the page from Rebecca Sheinberg to a 4 number of individuals. In the "to" line, are they all 5 employees of Diamondback Capital or were employees of 6 Diamondback Capital at the time, I should say? 7 A. Yes. 8 Q. And you see Mr. Todd Newman's name there? 9 A. Yes. 10 Q. Could you just explain what that is in that e-mail? 11 A. It's an e-mail notification informing those individuals 12 that they need to watch the video from the compliance training 13 because they did not go -- let me see. Yes. They -- so, 14 again, from this I can only say they either did not attend the 15 annual training which I believe was around that date or they 16 could have been new employees and were required to watch the 17 training. 18 Q. And then if you see in this e-mail, the second paragraph 19 says, "per Mark's e-mail below." If you could turn to the 20 third page of this document. Do you see there's an e-mail -- 21 A. Oh, yes. 22 Q. From you? 23 A. Yes. 24 MR. NATHANSON: You mean the second page. 25 MS. APPS: Thank you.</p>	<p>CBLFNEW2 Hadlock - direct Page 1307</p> <p>1 MS. APPS: Government offers 2251. 2 MR. NATHANSON: No objection. 3 THE COURT: All right, Government Exhibit 2251 is 4 received. 5 (Government's Exhibit 2251 received in evidence) 6 MS. APPS: If we could just publish the second page, 7 the top portion there under policy statement on insider 8 trading. 9 Q. And it states, the advisor -- and who is the advisor? 10 A. The advisor would be Diamondback Capital Management. 11 Q. "The advisor forbids any officer, director or employee from 12 trading either personally or on behalf of others, including 13 private accounts managed by the advisor on material non-public 14 information or communicating material non-public information to 15 others in violation of the law." Do you see that? 16 A. Yes. 17 Q. If you could look at what's been marked for identification 18 as Government's Exhibit 2253. Do you recognize that document? 19 A. Yes. 20 Q. What is it? 21 A. It's the cover page to the compliance manual revised 22 July 16, 2008. 23 Q. And if you look at the second page following, what portion 24 of the compliance manual is included here? 25 A. Policy and procedures to detect and prevent insider</p>

<p>CBLFNEW2 Hadlock - direct Page 1308</p> <p>1 trading.</p> <p>2 MS. APPS: Government offers 2253.</p> <p>3 MR. NATHANSON: No objection.</p> <p>4 THE COURT: All right, Government Exhibit 2253 is</p> <p>5 received.</p> <p>6 (Government's Exhibit 2253 received in evidence)</p> <p>7 Q. And, again, if you could publish it for the record, the</p> <p>8 policy statement at the top, similar to the policy statement</p> <p>9 that you saw before. Broadly speaking, Mr. Hadlock, what did</p> <p>10 you understand Diamondback's policy with respect to insider</p> <p>11 trading to be?</p> <p>12 A. That no employee was to engage in that activity.</p> <p>13 Q. If you could turn to the third page of this document,</p> <p>14 there's a heading called "material." Do you see that?</p> <p>15 A. Mm-hmm. Yes.</p> <p>16 Q. And on the second paragraph --</p> <p>17 MR. NATHANSON: Your Honor?</p> <p>18 THE COURT: Yes.</p> <p>19 MR. NATHANSON: We had discussed I think before the</p> <p>20 trial about a limiting instruction with respect to policies and</p> <p>21 your instructions at the end dealing with this.</p> <p>22 THE COURT: I'm just going to tell the jury, I'm going</p> <p>23 to instruct you at the end of the trial with respect to what</p> <p>24 the elements of the crimes are. The defendants are charged</p> <p>25 with crimes. A violation of a compliance manual is not a</p>	<p>CBLFNEW2 Hadlock - direct Page 1310</p> <p>1 problems or defaults."</p> <p>2 Q. Thank you. Now, did employees at Diamondback have to</p> <p>3 certify review of compliance manuals?</p> <p>4 A. Yes.</p> <p>5 Q. Could you take a look at what's been marked for</p> <p>6 identification as Government Exhibit 2271? Do you recognize</p> <p>7 that document?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. Again, it's a compliance notification regarding a policy</p> <p>11 and procedure, a new policy and procedure that was released to</p> <p>12 the firm.</p> <p>13 MS. APPS: Government offers 2271.</p> <p>14 THE COURT: Any objection?</p> <p>15 MR. NATHANSON: No objection.</p> <p>16 THE COURT: Government Exhibit 2271 is received.</p> <p>17 Q. Mr. Hadlock, if you could first look at the e-mail that's</p> <p>18 from Rebecca Sheinberg a third of the way down the page, and</p> <p>19 it's to a series of individuals. Do you recognize what that</p> <p>20 group of individuals is?</p> <p>21 A. Employees of the firm.</p> <p>22 Q. And it says, the subject line there -- the date is May 9,</p> <p>23 2008. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Subject line, "Reminder consultant policy certification</p>
<p>CBLFNEW2 Hadlock - direct Page 1309</p> <p>1 crime. This evidence may be relevant to the state of mind of</p> <p>2 the defendants or one of the defendants in this case, so I'll</p> <p>3 give you further instructions on that. Materiality will be one</p> <p>4 element that I will discuss at some length. If what I tell you</p> <p>5 is different than what's in the manual, then what I say</p> <p>6 matters, but you're certainly free to consider this for the</p> <p>7 limited purpose for which it's been offered. Okay?</p> <p>8 MR. NATHANSON: Thank you.</p> <p>9 Q. You said generally that -- withdrawn.</p> <p>10 MS. APPS: Mr. Hoffman, if you could come back to the</p> <p>11 first page.</p> <p>12 Q. Did you understand, Mr. Hadlock, that the policy prohibited</p> <p>13 use of material non-public information?</p> <p>14 A. Yes.</p> <p>15 MS. APPS: Mr. Hoffman, if you could come down to the</p> <p>16 third page where we just were, and highlight the two paragraphs</p> <p>17 under "material."</p> <p>18 Q. Mr. Hadlock, the second paragraph starts with examples of</p> <p>19 material information. Could you just read the first two to</p> <p>20 three lines there?</p> <p>21 A. "Examples of material information include information about</p> <p>22 unannounced dividend increases or decreases, earnings or</p> <p>23 earnings estimates, changes to previously released earnings or</p> <p>24 estimates, writedowns of assets, additions to reserves for bad</p> <p>25 debts, liquidity problems, defaults or other credit-related</p>	<p>CBLFNEW2 Hadlock - direct Page 1311</p> <p>1 required by end of day." Do you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. What was the consultant policy that was referred to there?</p> <p>4 A. It was the -- I believe it was the policy and procedures</p> <p>5 for communicating with research consultants.</p> <p>6 Q. And if you could turn to the attachment to this e-mail,</p> <p>7 which is three pages in.</p> <p>8 A. Yes.</p> <p>9 Q. Do you recognize that document?</p> <p>10 A. Oh, I'm sorry. What number?</p> <p>11 Q. It's the same document. Let me just make sure --</p> <p>12 A. I'm sorry. I didn't go far enough. Yes, sorry.</p> <p>13 Q. Do you recognize that attachment?</p> <p>14 A. Yes.</p> <p>15 Q. What is that?</p> <p>16 A. That is the policy and procedure for communicating with</p> <p>17 consultants.</p> <p>18 Q. What did consultants cover?</p> <p>19 A. Consultants covered people that the research staff would</p> <p>20 speak to outside of the firm who were familiar with companies</p> <p>21 or products or a myriad of things.</p> <p>22 Q. Did it include things like the expert network firms?</p> <p>23 A. Yes.</p> <p>24 Q. And did this policy address the rules about Diamondback</p> <p>25 employees such as research assistants talking to public company</p>

<p>CBLFNEW2 Hadlock - direct Page 1312</p> <p>1 insiders?</p> <p>2 A. Yes.</p> <p>3 Q. If you could turn to the second page of this document?</p> <p>4 There's a heading, communicating with paid research</p> <p>5 consultants. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Can you explain what that says on paragraph 1 and 1A?</p> <p>8 A. It talks about what the research consultant should be</p> <p>9 thinking about when it comes to communicating with consultants</p> <p>10 and -- when it comes to communicating with consultants.</p> <p>11 Particularly that, A, the consultant should not be employed by</p> <p>12 the company that the research analyst is looking to trade in.</p> <p>13 In other words a research consultant -- I use the word</p> <p>14 consultant. A research analyst should not be talking to</p> <p>15 somebody employed at a public company in which Diamondback was</p> <p>16 looking to invest in or had a position.</p> <p>17 Q. And you see on subparagraph A it talks about former</p> <p>18 employees? Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So what did that prohibition then extend to with respect to</p> <p>21 former employees?</p> <p>22 A. That if a research analyst was going to talk to somebody at</p> <p>23 a portfolio company and that person had worked at that company,</p> <p>24 they could not have worked at that company for less than six</p> <p>25 months. I'm sorry. They had to be gone from that company for</p>	<p>CBLFNEW2 Hadlock - direct Page 1314</p> <p>1 A. I wouldn't know the exact number, but I would say upwards</p> <p>2 of 125 to 175 between January of 2008 and December of 2009.</p> <p>3 The number changed because the firm was growing.</p> <p>4 Q. Is it fair to say that it increased over time?</p> <p>5 A. Yes.</p> <p>6 Q. And of those I think you said there were about, you</p> <p>7 testified earlier about 40 portfolio managers, is that about</p> <p>8 right?</p> <p>9 A. Yes, by the end of 2009, yes.</p> <p>10 Q. Do you recall how many traders there were by the end of</p> <p>11 2009?</p> <p>12 A. I wouldn't be able to give you an accurate number.</p> <p>13 Q. Did Ms. Sheinberg have anyone assist her in the task of</p> <p>14 reviewing e-mails?</p> <p>15 A. I don't believe so. I don't know.</p> <p>16 Q. I'm sorry, you said you don't believe so? I didn't hear</p> <p>17 that.</p> <p>18 A. I don't know.</p> <p>19 Q. Did she report to you, Ms. Sheinberg?</p> <p>20 A. She did. I don't think anyone else reviewed e-mails other</p> <p>21 than her when we started doing it.</p> <p>22 Q. And what were Ms. Sheinberg's responsibilities other than</p> <p>23 reviewing e-mails while she was at Diamondback?</p> <p>24 A. She helped to, she assisted in writing policies and</p> <p>25 procedures. She helped in other types of monitoring of the</p>
<p>CBLFNEW2 Hadlock - direct Page 1313</p> <p>1 a period of no less than -- they had to be gone from the</p> <p>2 company for six months or more.</p> <p>3 Q. Mr. Hadlock, I want to switch to a slightly different topic</p> <p>4 here. Did Diamondback ever conduct reviews of e-mails or</p> <p>5 instant messages of its employees?</p> <p>6 A. Yes.</p> <p>7 Q. Do you remember when that started?</p> <p>8 A. Not precisely, but sometime in 2008, early 2009.</p> <p>9 Q. So was that late 2008, do you remember, early 2009?</p> <p>10 A. Late 2008, early 2009.</p> <p>11 Q. And how did Diamondback carry that out?</p> <p>12 A. Rebecca Sheinberg, my compliance officer, would do e-mail</p> <p>13 reviews.</p> <p>14 Q. So Rebecca Sheinberg did the e-mail reviews for you?</p> <p>15 A. Yes.</p> <p>16 Q. How did she do those e-mail reviews?</p> <p>17 A. She would take a random set of employees from the</p> <p>18 investment staff and do keyword searches on their e-mails.</p> <p>19 Q. Do you know what keyword searches she employed?</p> <p>20 A. Not off the top of my head, but they were, it was a list</p> <p>21 commonly used or provided by or suggested by the SEC when doing</p> <p>22 e-mail reviews.</p> <p>23 Q. And other than reviewing e-mails in this fashion --</p> <p>24 withdrawn. How many employees did Diamondback have in 2008 and</p> <p>25 2009?</p>	<p>CBLFNEW2 Hadlock - direct Page 1315</p> <p>1 compliance program. She was basically my right hand man in</p> <p>2 compliance.</p> <p>3 Q. And I think, was she the -- withdrawn. Have you heard of</p> <p>4 the term soft dollars?</p> <p>5 A. Yes.</p> <p>6 Q. What are soft dollars?</p> <p>7 A. Soft dollars are, we call them soft dollar credits, are --</p> <p>8 soft dollar credits are generated from trading activity thrown</p> <p>9 off of the commission amounts paid for trades.</p> <p>10 Q. And what are they used for?</p> <p>11 A. Soft dollars are used to pay for certain types of research</p> <p>12 and execution services if they're used within Section 28(e)</p> <p>13 safe harbor.</p> <p>14 Q. First of all, what are execution services?</p> <p>15 A. Transmitting of the order from the firm to brokers.</p> <p>16 Transmission of settling the trade with the brokers and prime</p> <p>17 broker.</p> <p>18 Q. You said also that they're used for research services?</p> <p>19 A. Yes.</p> <p>20 Q. What did you mean by that?</p> <p>21 A. Research services that are used for the firm when you're</p> <p>22 paying people, when you're paying firms for research provided.</p> <p>23 Q. And was it also, was it limited to firms or could it also</p> <p>24 cover individual consultants?</p> <p>25 A. It covered individual consultants as well.</p>

<p>CBLFNEW2 Hadlock - direct Page 1316</p> <p>1 Q. Could you look at what's been marked for identification as 2 2267.</p> <p>3 THE COURT: Before you do that, I don't understand, 4 you said "generated from trading activity thrown off of the 5 commission amounts paid for trades." I don't know what that 6 means.</p> <p>7 THE WITNESS: Okay. Generally when you engage a 8 broker to execute trades on your behalf, you'll say, okay, I'm 9 going to execute trades, I'm going to execute equity trades and 10 you're going to charge us .75 percent of a penny, 75 mils, 11 okay?</p> <p>12 THE COURT: All right.</p> <p>13 THE WITNESS: But we want to have a soft dollar, we 14 want to create a soft dollar balance as well in our trading 15 commission so we're going to add 25 mils to that 75 mils, so 16 we're going to -- you're going to charge a penny for our 17 commissions, right, per share, and you're going to segregate 18 that .25 cents off to the side.</p> <p>19 THE COURT: And who is the "you" in this example?</p> <p>20 THE WITNESS: The broker dealer.</p> <p>21 THE COURT: There were various broker dealers with 22 whom Diamondback had arrangements?</p> <p>23 THE WITNESS: Correct.</p> <p>24 THE COURT: All right.</p> <p>25 Q. Mr. Hadlock, what is 2267?</p>	<p>CBLFNEW2 Hadlock - direct Page 1318</p> <p>1 A. Well, at Diamondback, Diamondback for the time that I was 2 there was not restricted to 28(e).</p> <p>3 Q. Explain what that means.</p> <p>4 A. So what that means is, as long as we disclose to our 5 clients exactly what we were doing with soft dollars and what 6 services and products we were paying for through the use of 7 these soft dollar credits, we could do so. Some of those 8 products and services were within safe harbor because they were 9 related to execution and trading and research, and others were 10 not.</p> <p>11 Q. Could you look at what's been marked for identification as 12 Government Exhibit 2270?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recognize that document?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. A soft dollar request form.</p> <p>18 MS. APPS: Government offers 2270.</p> <p>19 MR. NATHANSON: Objection, your Honor.</p> <p>20 THE COURT: Objection?</p> <p>21 MR. NATHANSON: Yes. I don't think this is the 22 complete document.</p> <p>23 THE COURT: On the rule of completeness you're 24 objecting?</p> <p>25 MS. APPS: One moment, your Honor.</p>
<p>CBLFNEW2 Hadlock - direct Page 1317</p> <p>1 A. Policy and procedure relating to soft dollar and directed 2 brokerage arrangements.</p> <p>3 Q. For Diamondback?</p> <p>4 A. Yes.</p> <p>5 MS. APPS: Government offers 2267.</p> <p>6 THE COURT: Any objection?</p> <p>7 MR. NATHANSON: No objection.</p> <p>8 THE COURT: 2267 is received.</p> <p>9 (Government's Exhibit 2267 received in evidence)</p> <p>10 Q. In the first paragraph of that document, it talks about 11 something that you mentioned a few moments ago, Section 28(e). 12 What is that about?</p> <p>13 A. 28(e) is a safe harbor provided for the use of soft dollars 14 that restricts the use of soft dollars to trading execution and 15 research.</p> <p>16 Q. And were there particular forms at Diamondback for purposes 17 of signing up research consultants that you recall?</p> <p>18 A. Particular forms for --</p> <p>19 Q. Withdrawn. Let me ask you this, Mr. Hadlock. Could you 20 look at what's been marked -- well, withdrawn. Just to follow 21 up on Section 28(e) here, how did that relate to the payment of 22 soft dollars to research consultants?</p> <p>23 A. How did 28(e) relate?</p> <p>24 Q. Yes. Did that impose some restraints on the rules about 25 soft dollar payments?</p>	<p>CBLFNEW2 Hadlock - direct Page 1319</p> <p>1 MR. NATHANSON: I think it's a multi-page document, 2 your Honor.</p> <p>3 THE COURT: Well, I mean, is there some portion of the 4 remainder that matters?</p> <p>5 MS. APPS: Let me do this. May I approach, your 6 Honor?</p> <p>7 THE COURT: Yes.</p> <p>8 Q. Take a look at this document. This is marked as Government 9 Exhibit 2270. How many pages does that have?</p> <p>10 A. Five.</p> <p>11 Q. And do you recognize pages 2, 3, 4 and 5?</p> <p>12 A. Not off the top of my head, no.</p> <p>13 Q. And do you know one way or another whether these documents 14 were attached as a single document in Diamondback's files?</p> <p>15 A. I don't know.</p> <p>16 MS. APPS: So, your Honor, if I could do this, just 17 one moment.</p> <p>18 (Pause)</p> <p>19 MS. APPS: Your Honor, I think the parties have to 20 stipulate that the five-page document that is now Government 21 Exhibit 2270 was produced to the government as one document. 22 Obviously, this witness doesn't recognize pages 2 to 5, but 23 we're happy to stipulate that that's the way it was provided to 24 the government.</p> <p>25 THE COURT: And to offer the five-page document?</p>

<p>CBLFNEW2 Hadlock - direct Page 1320</p> <p>1 MS. APPS: And to offer the five-page document.</p> <p>2 THE COURT: No objection to that?</p> <p>3 MR. NATHANSON: No.</p> <p>4 THE COURT: So government's Exhibit 2270, the</p> <p>5 five-page document, is admitted.</p> <p>6 (Government's Exhibit 2270 received in evidence)</p> <p>7 Q. Just looking at the first page, Mr. Hadlock, the only page</p> <p>8 you recognize here, at the bottom of the page there's something</p> <p>9 "approved by." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And there's a signature there?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recognize that signature?</p> <p>14 A. My signature.</p> <p>15 Q. And beneath that it says, "To be completed by trading." Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. What does that mean?</p> <p>19 A. That the senior trader, Tony Bechelany's, signature is</p> <p>20 required.</p> <p>21 Q. And underneath that, "To be completed by department</p> <p>22 manager." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Who is the manager that's listed there?</p> <p>25 A. Todd Newman.</p>	<p>CBLFNEW2 Hadlock - direct Page 1322</p> <p>1 filled in?</p> <p>2 A. Yes.</p> <p>3 Q. And below that there is a heading, "Description of</p> <p>4 expenditures outside of 28(e)." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. There's a series of lines and none of them are ticked, is</p> <p>7 that fair to say?</p> <p>8 A. Yes.</p> <p>9 Q. Was this the standard form used for soft dollar requests at</p> <p>10 Diamondback?</p> <p>11 A. At the time, yes.</p> <p>12 Q. Just publishing for the record, I know you don't recognize</p> <p>13 this document, but if you could turn to the second page of this</p> <p>14 document. Mr. Hoffman, if you could blow that up? It's an</p> <p>15 e-mail from Todd Newman December 19, 2008 to Katherine Magee</p> <p>16 and Lauren Conant. Who is Lauren Conant?</p> <p>17 A. She worked for Cathy.</p> <p>18 Q. It says, "Consultant bonuses for 2008." Publishing for the</p> <p>19 record, "Below is a list of bonuses Mtec wants to pay out for</p> <p>20 2008. Also changes to be made for 2009. Bonus for 2008, Eskay</p> <p>21 \$25,000, J Souza 200,000 --"</p> <p>22 A. 20,000.</p> <p>23 Q. Sorry, sorry, sorry. "\$20,000, Ruchi Goyal \$100,000." Do</p> <p>24 you see that?</p> <p>25 A. Yes.</p>
<p>CBLFNEW2 Hadlock - direct Page 1321</p> <p>1 Q. Now, coming back to the -- and the dollar amount, what is</p> <p>2 the dollar amount listed there?</p> <p>3 A. 145,000.</p> <p>4 Q. So coming back to the top of the page, and it's headed,</p> <p>5 "Soft dollar request form." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And there's a request on there. Who is listed as the</p> <p>8 requester?</p> <p>9 A. Todd Newman.</p> <p>10 Q. And vendor, what is meant by vendor on this form?</p> <p>11 A. The research provider.</p> <p>12 Q. There are a number of vendors on this form.</p> <p>13 A. Yes.</p> <p>14 Q. Who are the vendors?</p> <p>15 A. Eskay, J. Souza, Ruchi Goyal.</p> <p>16 Q. And the date of this document is what, Mr. Hadlock?</p> <p>17 A. 12/23/2008.</p> <p>18 Q. It says, "Total cost." What does that refer to?</p> <p>19 A. The amount to be paid to these two providers.</p> <p>20 Q. And below that there's a series of circles and one is</p> <p>21 filled in next to research service. And again, what is that?</p> <p>22 A. Research service would indicate that these providers were</p> <p>23 providing research services to the requester.</p> <p>24 Q. And do you see that there's on the right-hand side an</p> <p>25 amount within 28(e) and outside 28(e) and none of those are</p>	<p>CBLFNEW2 Hadlock - direct Page 1323</p> <p>1 Q. And below there's, "2009 will cut cents to \$30,000 for the</p> <p>2 year. IPR is out, Gartner Group, also CXL."</p> <p>3 Now, Mr. Hadlock, are you familiar with Mtec, what</p> <p>4 that means?</p> <p>5 A. Mtec?</p> <p>6 Q. Yes.</p> <p>7 A. The name of Todd's book.</p> <p>8 Q. Are there any rules at Diamondback with respect to the</p> <p>9 payment of bonuses to soft dollar research providers?</p> <p>10 A. We did not.</p> <p>11 Q. Did not what?</p> <p>12 A. Pay bonuses to research providers.</p> <p>13 Q. And why was that?</p> <p>14 A. Because I said so. I mean, you just don't pay, you don't</p> <p>15 pay soft dollars to -- you pay soft dollars to research</p> <p>16 providers for services that they render.</p> <p>17 Q. Could you look at what's been marked for identification as</p> <p>18 Government Exhibit 2269?</p> <p>19 MS. APPS: One moment, your Honor.</p> <p>20 (Pause)</p> <p>21 Q. Let me ask you, do you recognize the first page of this</p> <p>22 document?</p> <p>23 A. I recognize it to be a soft dollar request form.</p> <p>24 Q. And are you familiar with the second and third pages of</p> <p>25 this document?</p>

<p>CBLFNEW2 Hadlock - direct Page 1324</p> <p>1 A. I am not. 2 MS. APPS: Government offers 2269. 3 MR. NATHANSON: The complete document, yes, your 4 Honor. We don't object. 5 THE COURT: So Government's 2269, which is a 6 three-page document, is received. 7 (Government's Exhibit 2269 received in evidence) 8 Q. Starting at the top, Mr. Hadlock, is this the same type of 9 form we just saw in 2270? 10 A. Yes. 11 Q. It says, "Soft dollar request form" at the top. The 12 requester is Jesse Tortora. Do you know who Jesse Tortora is? 13 A. A research analyst at Diamondback. 14 Q. Do you ever recall talking to Jesse Tortora while at 15 Diamondback? 16 A. Specifically no. I'm sure I did at some point, but I have 17 no recollection of any conversation. 18 Q. On the right-hand side it says "paying broker." Do you see 19 those words? 20 A. Yes. 21 Q. Written there is "ITG Hoenig." 22 A. Yes. 23 Q. What is ITG Hoenig? 24 A. A broker dealer that provides soft dollar aggregation 25 services.</p>	<p>CBLFNEW2 Hadlock - direct Page 1326</p> <p>1 payments? 2 A. Yes. 3 Q. Were you ever aware that some of those brokerage firms 4 required sample research for a research consultant to be paid 5 by soft dollars? 6 A. I believe they did. 7 MS. APPS: Just one moment, your Honor. 8 No further questions. 9 THE COURT: Okay, Mr. Nathanson. Cross. 10 CROSS-EXAMINATION 11 BY MR. NATHANSON: 12 Q. Good morning, Mr. Hadlock. 13 A. Good morning. 14 Q. We haven't met before, have we? 15 A. No, sir. 16 Q. I want to first ask you about compensation. You were shown 17 a document, a summary of the document representing Mr. Newman's 18 compensation for the years '07, '08 and '09. Do you recall 19 that? 20 A. Yes. 21 Q. Do you have that document in front of you? It's Government 22 Exhibit 95. 23 A. Yes. 24 Q. And am I right that Mr. Newman's compensation for 2007 was 25 about 3.35 million, is that right?</p>
<p>CBLFNEW2 Hadlock - direct Page 1325</p> <p>1 Q. And it says description, under the word -- sorry. Next to 2 the word "description" on the left-hand side, "Services 3 provided from April to June 2008." Do you see that? 4 A. Yes. 5 Q. And again, research services is ticked off there. 6 Mr. Hadlock, if you look further down the page under 7 "approved by," do you recognize that signature? 8 A. I believe it's Cathy Magee's. 9 Q. Again, what was Ms. Magee's role with respect to soft 10 dollar payments? 11 A. Cathy was very close to the soft dollar process. 12 Q. Did Diamondback keep records of the amounts of money that 13 are paid out to the soft dollar research providers? 14 A. Yes. 15 Q. Like the ones we've seen here? 16 A. Yes. 17 Q. Was there any requirement by Diamondback for samples of 18 research to be provided by research providers in the soft 19 dollar context? 20 A. As part of our practice we tried to have samples of 21 research provided when signing on a research provider. It 22 wasn't our policy, it was more of a best practice. 23 Q. And as part of your job in dealing with soft dollar payors, 24 meaning the broker dealers, did you become familiar with some 25 of the requirements of the brokerage firms for soft dollar</p>	<p>CBLFNEW2 Hadlock - cross Page 1327</p> <p>1 A. Yes. 2 Q. For 2008 about 3.37 million -- I'm sorry, 3.33 million or 3 so, is that right? 4 A. Yes. 5 Q. And 3.56 million for '09, correct? 6 A. Yes. 7 Q. So his compensation was roughly similar over those three 8 years, is that correct? 9 A. Yes. 10 Q. Would you describe Mr. Newman as having been, let's just 11 take the period from his start through 2009, was he a 12 successful portfolio manager at Diamondback? 13 A. Yes. 14 Q. And he was successful from the time he started in 2006 for 15 that year and subsequent years, is that correct, through 2009, 16 let's say? 17 A. I can't remember about 2006, but I believe for those other 18 years, yes. 19 Q. So you don't recall one way or the other for 2006 whether 20 or not he was a successful -- 21 A. I don't know if he was up or down. 22 Q. But he certainly was for '07 and the two subsequent years, 23 is that correct? 24 A. Yes. 25 Q. Thank you. You mentioned a Ms. Magee during your testimony</p>

<p>CBLFNEW2 Hadlock - cross Page 1328</p> <p>1 and referenced that she was head of HR and worked for you, 2 under you in your chief administrative officer role, is that 3 right? 4 A. Yes. 5 Q. She also had a compliance function, is that correct? 6 A. Yes. 7 Q. She was under you as a compliance officer, is that right? 8 A. Yes. 9 Q. You mentioned before a Ms. Sheinberg, correct? 10 A. Yes. 11 Q. She was also a compliance officer working under you? 12 A. Yes. 13 Q. And I think you mentioned that she was a lawyer, at least 14 had legal training as well, is that right? 15 A. I believe she's a lawyer. 16 Q. You talked about soft dollars during your direct testimony 17 and you mentioned certain of the things that soft dollars can 18 be used for. They can be used for things like Bloomberg 19 Financial, isn't that right? 20 A. Yes. 21 Q. And they can be used for individual consultants, is that 22 correct? 23 A. Yes. 24 Q. And Diamondback during the time that you were there, its 25 various professionals hired quite a number of individual</p>	<p>CBLFNEW2 Hadlock - cross Page 1330</p> <p>1 A. Agreed. 2 Q. And those were used by a number of people within 3 Diamondback, is that correct? 4 A. Yes. 5 Q. Have any idea, Mr. Hadlock, how much on an annual basis 6 Diamondback spends on expert network services? 7 MS. APPS: Objection. 401. 8 THE COURT: Overruled. You can answer. 9 A. I don't. 10 Q. Do you know if it's hundreds of thousands of dollars a 11 year? 12 A. Hundreds of thousand? Again, I don't have any recollection 13 of the amount spent specifically on expert networks. 14 Q. Mr. Hadlock, soft dollars are a standard part of hedge 15 funds as you're aware, correct? 16 A. Correct. 17 Q. In other words, soft dollars are used by all hedge funds 18 to, among other things, pay for research consultants, isn't 19 that right? 20 A. Not all hedge funds. Again, it depends on their requisite 21 practice. 22 Q. But certainly many hedge funds, isn't that right? 23 A. Many, yes. 24 Q. Do you have any idea, Mr. Hadlock, about how much money Mr. 25 Newman's book Mtec spent on soft dollars for the years 2008 and</p>
<p>CBLFNEW2 Hadlock - cross Page 1329</p> <p>1 consultants as well as other soft dollar vendors, isn't that 2 right? 3 A. Yes. 4 Q. And they hired a number of expert networks as well, 5 correct? 6 A. Yes. 7 Q. Do you recognize the name Primary Global Research? 8 A. Yes. 9 Q. That was one of the soft dollar expert network services 10 that was used, is that right? 11 A. Yes. 12 Q. And there were others too, correct? 13 A. Yes. 14 Q. So if I mention the names Coleman, that's one of them, is 15 that right? Do you recall that name? 16 A. I don't specifically recall that name. 17 Q. How about DeMatteo, is that one? 18 A. I do recall DeMatteo. 19 Q. Vista; do you recall Vista? 20 A. Yes. 21 Q. GLG or Gerson Lehrman Group? 22 A. Yes. 23 Q. I may not be getting all of them, but there were a number 24 of expert service providers, is that right? I've listed a 25 number of them, correct?</p>	<p>CBLFNEW2 Hadlock - cross Page 1331</p> <p>1 2009? 2 A. No. 3 Q. Do you have any idea if it was millions of dollars each 4 year? 5 A. I have no idea. 6 Q. But he would generate trading commissions, correct, out of 7 his book, right? 8 A. Yes. 9 Q. And then he would be able to spend those trading 10 commissions on soft dollars, isn't that right? 11 A. Again, trading commissions or soft dollar commissions. 12 Q. Soft dollar commissions? 13 A. Soft dollar credits. 14 Q. He generated soft dollar commissions out of his trading, 15 isn't that right? 16 A. Yes. 17 Q. And he would be able to spend those on the soft dollar 18 consultants, right? 19 A. Yes. 20 Q. And that was an example of how portfolio managers worked at 21 Diamondback, right? 22 A. Yes. 23 Q. Now, the process for reviewing soft dollar payment, how is 24 that done at Diamondback? So a soft dollar vendor is bought on 25 and you want to pay him. How is that done?</p>

<p>CBLFNEW2 Hadlock - cross Page 1332</p> <p>1 A. Again, it would start with the soft dollar request form, so 2 the portfolio manager, somebody in his group would fill out a 3 soft dollar request form. They would go to the head trader 4 talk about the services provided as well as the cost. The form 5 was then sent down to compliance for review, whether that was 6 an inside or outside of safe harbor expense, for instance. 7 Somebody in compliance, in this case it was mostly 8 Cathy who helped set this whole process up, would do certain, 9 would obtain certain documents from the soft dollar provider 10 like a W9, samples of research if they could get it, things of 11 that nature, keep a database of our service providers. 12 Q. So there was a process that involved compliance among other 13 functions within Diamondback when a payment was made to a soft 14 dollar provider, is that right? 15 A. Yes. 16 Q. And part of that process was the soft dollar request forms 17 that Ms. Apps showed you a couple of them, correct? 18 A. Yes. 19 Q. You mentioned written research and you said that there 20 was -- 21 A. I'm sorry, I mentioned what? 22 Q. Written research. Do you recall that? 23 A. Yes. 24 Q. And you said that there was no policy that required written 25 research, isn't that correct?</p>	<p>CBLFNEW2 Hadlock - cross Page 1334</p> <p>1 A. Yes. 2 Q. That policy was required by, to be acknowledged by all 3 professionals within Diamondback, isn't that right? 4 A. Yes. 5 Q. And that would include Mr. Tortora, isn't that right? 6 A. Yes. 7 Q. By the way, are you aware of whether or not Mr. Newman and 8 Mtec used Primary Global Research? Do you know one way or the 9 other? 10 A. I'm not aware. 11 Q. Is it fair to say you wouldn't be aware of who on his team, 12 if anybody, actually communicated with Primary Global Research, 13 is that right? 14 A. Correct. 15 Q. Did you ever have an occasion to speak to Mr. Newman about 16 his understanding of that consultant policy from May '08 that 17 Ms. Apps showed you? 18 A. No recollection. 19 Q. Same question with respect to Mr. Tortora; ever have any 20 discussion about his understanding of the policy? 21 A. No recall. 22 Q. I want to go to Government Exhibit 2251. This is a 23 compliance policy for 2005, is that right? 24 A. Yes. 25 Q. And so was that the policy that was in place when Mr.</p>
<p>CBLFNEW2 Hadlock - cross Page 1333</p> <p>1 A. Right. 2 Q. In other words, you said there may be a practice but there 3 was no policy, isn't that right? 4 A. Yes. 5 Q. And you're aware that on occasion certain consultants would 6 provide their research or analysis in meetings or in person or 7 in telephone calls, isn't that right? 8 A. Yes. 9 Q. Did there come a time in 2009, late 2009, Mr. Hadlock, 10 where there was conversations between Diamondback and various 11 expert network firms about their practices? 12 A. I recall on-boarding expert network firms. 13 Q. In 2009? 14 A. Yes. 15 Q. You don't recall at the end of 2009 there being a movement 16 to call expert network firms and define with them the 17 appropriate role that they had vis-a-vis the professionals at 18 Diamondback? 19 A. I don't. 20 Q. You were shown, Mr. Hadlock, a 2008 policy with respect to 21 consultants. Do you recall that? 22 A. Yes. 23 Q. And you were shown a document that Mr. Newman and others 24 were on asking them to acknowledge the policy. Do you recall 25 that?</p>	<p>CBLFNEW2 Hadlock - cross Page 1335</p> <p>1 Newman started in March of 2006, approximately? 2 A. Yes. 3 Q. I want to take you to page G-2 and in particular, if we can 4 blow up what it is, number 3, that first item that says 5 "contacts with public companies," and if we could just 6 highlight that first sentence. Mr. Hadlock, that sentence 7 reads: "The advisor may make investment decisions on the basis 8 of the firm's conclusions formed through such contacts." I'll 9 just stop there. Do you understand "such contacts" meaning 10 contacts with public companies? 11 A. Yes. 12 Q. "And analysis of publicly available information regarding 13 foreign and U.S. companies." Do you see that? 14 A. Yes. 15 Q. So it was contemplated by Diamondback's policies that its 16 professionals would have contacts with public companies, is 17 that correct? 18 A. Yes. 19 Q. That was part of their job in fact was to have contact with 20 public companies in furtherance of their research efforts, 21 isn't that right? 22 A. Yes. 23 Q. Now, I want to go to Government Exhibit 2253, which I don't 24 believe -- 25 MR. NATHANSON: Sorry, is that in evidence?</p>

<p>CBLFNEW2 Hadlock - cross Page 1336</p> <p>1 MS. APPS: It is.</p> <p>2 Q. If we could go to 2253 which is in evidence. And again,</p> <p>3 that's a compliance policy that was in effect in 2008, is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And that's a revised policy from the one that we just saw</p> <p>7 from 2005?</p> <p>8 A. Yes.</p> <p>9 Q. And if you could take a look at page F-5, do you have that</p> <p>10 in front of you?</p> <p>11 A. I do.</p> <p>12 Q. And again, if we could just blow up the contacts with the</p> <p>13 public companies. Thank you. And, Mr. Hadlock, that reads,</p> <p>14 "Contacts with public companies represent an important part of</p> <p>15 the advisor's research efforts. The advisor may make</p> <p>16 investment decisions based upon conclusions reached through</p> <p>17 discussions with such contacts and analysis of publicly</p> <p>18 available information." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Again, it's a reaffirmation, is it not, that contacts with</p> <p>21 public companies was a standard part of the research process at</p> <p>22 Diamondback, isn't that right?</p> <p>23 A. Yes.</p> <p>24 Q. And in fact, it was expected of analysts, professionals</p> <p>25 generally within Diamondback that they would have such contacts</p>	<p>CBLFNEW2 Hadlock - cross Page 1338</p> <p>1 policy, this compliance policy's definition of these words, is</p> <p>2 that right?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "Information is non-public unless it has been</p> <p>5 broadly disseminated or made widely available to the general</p> <p>6 public such as by means of press release carried over a major</p> <p>7 news service, a major news publication, a third party research</p> <p>8 report, a public filing," etc. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. So that says that one of -- would you agree that one of the</p> <p>11 definitions of information that's not -- non-public can be that</p> <p>12 it's published in a third party research report based on this</p> <p>13 definition, isn't that right?</p> <p>14 A. Yes.</p> <p>15 Q. And if we could go to F3, so it's the third page of the</p> <p>16 policy. By the way, we were talking just a moment ago about</p> <p>17 third party research report. Do you understand that to mean or</p> <p>18 include sell side analyst reports, is that what we mean by</p> <p>19 third party research reports?</p> <p>20 A. Yes, as long as it's broadly disseminated.</p> <p>21 Q. And you understand that sell side research reports from the</p> <p>22 likes of Merrill Lynch or a Lehman, those get broad</p> <p>23 dissemination, isn't that right?</p> <p>24 A. Yes.</p> <p>25 Q. Again, F3, if we could go to that box that's highlighted</p>
<p>CBLFNEW2 Hadlock - cross Page 1337</p> <p>1 in order to further their research efforts when they were</p> <p>2 analyzing companies, isn't that right?</p> <p>3 A. Again, I'm not a research analyst and I never worked for a</p> <p>4 portfolio manager, but my general understanding is yes.</p> <p>5 Q. I want to go to page F1, if we could, of that policy.</p> <p>6 2253. And if we could blow up the definition section. And if</p> <p>7 we could just read, "In the ordinary course of your activities</p> <p>8 for the advisor you may obtain confidential information. From</p> <p>9 time to time you may also obtain confidential information that</p> <p>10 is material to the price of an issuer's securities." Do you</p> <p>11 see that?</p> <p>12 A. Yes.</p> <p>13 Q. Am I right that that recognizes that some information can</p> <p>14 be confidential but not material and then there's some</p> <p>15 information that's confidential but is also material, is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And if you could go to F2, to the next page of the</p> <p>19 document, and I believe if you recall Ms. Apps asked you about</p> <p>20 the section that reads "material" on top and asked you about</p> <p>21 the paragraphs below that. Do you recall that?</p> <p>22 A. Yes.</p> <p>23 Q. I just want to go to the paragraph above that, if we could</p> <p>24 blow that up. That says, "Information is non-public based on</p> <p>25 the --" Withdrawn. Mr. Hadlock, this is the compliance</p>	<p>CBLFNEW2 Hadlock - cross Page 1339</p> <p>1 there. And this says, that first sentence says, "The</p> <p>2 determination of whether information is material or nonpublic</p> <p>3 or whether there exists a duty of confidentiality can be very</p> <p>4 difficult to make." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. These words are in your compliance policy, isn't that</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. Now, if we can go to back in this policy to F1 and if we</p> <p>10 can go to the number A down in the bottom there. This is a</p> <p>11 definition generally of confidential information under this</p> <p>12 policy, isn't that right?</p> <p>13 A. Yes.</p> <p>14 Q. And am I right, without reading all the words here, am I</p> <p>15 right that generally the confidential information at issue here</p> <p>16 is at least in part confidential information that belongs to</p> <p>17 Diamondback, isn't that right?</p> <p>18 A. Yes.</p> <p>19 Q. And am I right that under these policies, and you can look</p> <p>20 at this section -- well, let me just ask the question. Am I</p> <p>21 right that under policies, this Diamondback policy, that</p> <p>22 confidential information of Diamondback would include its</p> <p>23 trading positions, for example?</p> <p>24 A. Yes.</p> <p>25 Q. And it would include its P&L, is that right, your profit</p>

<p>CBLFNEW2 Hadlock - cross Page 1340</p> <p>1 and loss?</p> <p>2 A. Yes.</p> <p>3 Q. And the profit and loss and P&L information was considered</p> <p>4 confidential information with respect to Diamondback, isn't</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. And Diamondback employees were not permitted under this</p> <p>8 policy to disseminate that unless it was necessary within their</p> <p>9 job function, isn't that right?</p> <p>10 A. Yes.</p> <p>11 Q. So, for example, you couldn't disseminate your trading</p> <p>12 positions or your, if you were an analyst your portfolio's</p> <p>13 trading positions to your relative, isn't that right?</p> <p>14 A. Correct.</p> <p>15 Q. Now, you had mentioned that Diamondback was a registered</p> <p>16 investment advisor, and if you didn't, forgive me. It was a</p> <p>17 registered investment advisor, was it not?</p> <p>18 A. Yes.</p> <p>19 Q. When did it become registered?</p> <p>20 A. The application went in January, so sometime in late</p> <p>21 January, early February. Of 2006, I'm sorry.</p> <p>22 Q. And as a registered investment advisor, Diamondback was,</p> <p>23 had to submit to various regulations, isn't that right?</p> <p>24 A. Yes.</p> <p>25 Q. And was one of the rules that it had to submit to the fact</p>	<p>CBLMNEW3 Hadlock - cross Page 1342</p> <p>1 Q. Do you know if Ms. Magee, who is your compliance officer,</p> <p>2 assisted or did any monitoring herself?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you know, can the SEC come in as part of its routine</p> <p>5 exam as a registered investment advisor and look at any</p> <p>6 communications on Diamondback's system?</p> <p>7 A. Yes.</p> <p>8 Q. That's one of its exam functions, is that right, periodic</p> <p>9 exams, where it comes in and looks at the books and records of</p> <p>10 an investment advisor, is that right?</p> <p>11 A. Yes.</p> <p>12 Q. That would include e-mails or instant messages on</p> <p>13 Diamondback's e-mail or IM system, isn't that right?</p> <p>14 A. Yes.</p> <p>15 Q. I want to show you, if I could, Government Exhibit 100</p> <p>16 that's in evidence.</p> <p>17 MR. NATHANSON: If we could just put it up on the</p> <p>18 screen. If we can just go to the bottom e-mail on the</p> <p>19 left-hand page. That's fine. And then on the next page, just</p> <p>20 that portion that you are just pulling up. Terrific.</p> <p>21 Q. You'll see, Mr. Hadlock, and I understand you don't</p> <p>22 recognize this document, but you will see that it's got a date</p> <p>23 of August 3 of 2007, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And I just want to go to the footer. And do you recognize</p>
<p>CBLFNEW2 Hadlock - cross Page 1341</p> <p>1 that it had archived communications?</p> <p>2 A. Yes.</p> <p>3 Q. That includes e-mails and instant messages, is that right?</p> <p>4 A. Yes.</p> <p>5 Q. So that from the time it was registered up until the time</p> <p>6 you were employed all the e-mails internally at Diamondback or</p> <p>7 externally, they were sent externally, those were all archived,</p> <p>8 isn't that correct?</p> <p>9 A. Correct.</p> <p>10 Q. By the way, was there any policy on using your personal</p> <p>11 e-mail account?</p> <p>12 A. The policy within the firm was that you could only use firm</p> <p>13 methods, Diamondback methods of communication for Diamondback</p> <p>14 business, especially trading and investment.</p> <p>15 Q. Now, am I right that you had mentioned that there was</p> <p>16 certain monitoring that went on within Diamondback I think you</p> <p>17 said in late 2008, early 2009, it started within that period,</p> <p>18 is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And you said that Ms. Sheinberg who you had identified</p> <p>21 before as a compliance officer and a lawyer, she was the person</p> <p>22 that you recall who did the monitoring of e-mails during that</p> <p>23 period, is that right?</p> <p>24 A. Yes.</p> <p>25 (Continued next page)</p>	<p>CBLMNEW3 Hadlock - cross Page 1343</p> <p>1 the form of this footer, generally?</p> <p>2 A. Yes.</p> <p>3 Q. And if we could go to the section, the footer, it's the</p> <p>4 second sentence from the left, from the bottom. It starts all</p> <p>5 e-mails?</p> <p>6 A. Yes.</p> <p>7 Q. This says: All e-mails sent to or received from this</p> <p>8 address will be received by Diamondback Capital Management's</p> <p>9 company e-mail system and is subject to archival and possible</p> <p>10 review by someone other than the recipient.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And that was a standard tag that Diamondback had put on</p> <p>14 e-mails that came in or out of the firm, is that right?</p> <p>15 A. Yes.</p> <p>16 Q. And one of the things it did is notify the participants to</p> <p>17 an e-mail communication that e-mails were subject to archive</p> <p>18 and review, is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And if we could go to Government Exhibit 243A in evidence.</p> <p>21 I really just care about the top two. It's really the tag that</p> <p>22 I care about, Mr. Hadlock, at the moment.</p> <p>23 And this tag reads: All instant messages sent to and</p> <p>24 from this buddy name will be logged by the IM auditor and are</p> <p>25 subject to archival, monitoring or review and/or disclosure to</p>

<p>CBLMNEW3 Hadlock - cross Page 1344</p> <p>1 someone other than the recipient. 2 Do you see that? 3 A. Yes. 4 Q. Do you recognize that as a standard tag that was put on 5 instant messages at Diamondback when Diamondback employees 6 participated in an IM session? 7 A. Yes. 8 Q. Now, if we could go to -- and I believe this is in your 9 binder as Defense Exhibit 10030. 10 THE COURT: What tab? 11 MR. NATHANSON: I'm sorry. It's tab 7, your Honor. 12 A. 10030. 13 Q. Correct. Do you see that? 14 A. Yes. 15 Q. Do you recognize that as a portion of the compliance manual 16 that Diamondback adopted December 1, 2005 and revised as of 17 April 6, 2009? 18 A. Yes. 19 MR. NATHANSON: The defense offers Defense Exhibit 20 10030. 21 MS. APPS: No objection. 22 THE COURT: Defense Exhibit 10030 is received. 23 (Defendant's Exhibit 10030 received in evidence) 24 Q. Generally, Mr. Padlock, is there a policy that governs 25 personal trading at Diamondback?</p>	<p>CBLMNEW3 Hadlock - cross Page 1346</p> <p>1 department of that fact, is that correct? 2 A. Yes. 3 Q. And this policy, by the way, is dated April 2009. 4 Did you recall that that policy of reporting new 5 accounts was in effect prior to April of 2009? 6 A. I believe it was. 7 Q. If you have any doubt I'm happy to show you a prior policy. 8 Do you believe that it was in effect prior to that? 9 A. Yes. 10 Q. And if you look at the top, number 1 here, it says: All 11 covered persons must arrange for a duplicate report of their 12 securities transactions to be provided to the compliance 13 department no later than 30 days after the end of each calendar 14 quarter. 15 Do you see that? 16 A. Yes. 17 Q. And that generally provided that if you had an account that 18 you would have to report your securities transactions on a 19 regular basis to Diamondback compliance, isn't that right? 20 A. Yes. 21 Q. And then if we could go to page 68, the prior page. If we 22 could go to the -- you see that there is a section that reads 23 restriction on personal investing activities? 24 A. Yes. 25 Q. And under that there are a series of subportions describing</p>
<p>CBLMNEW3 Hadlock - cross Page 1345</p> <p>1 A. Yes. 2 Q. Does this compliance policy generally speak about personal 3 trading? 4 A. Our code of ethics, yes. 5 Q. And if you could go to page 69. It's obviously not 69 of 6 the document. If you look at the bottom, it says 69 on it. 7 Do you see that? 8 A. Yes. 9 MR. NATHANSON: If you could just blow up from 10 reporting of potential violations through the new accounts 11 paragraph. 12 Q. I just want to go to number 3 first. This says each 13 covered person would include any professionals at Diamondback, 14 isn't that right? 15 A. There is a definition of covered persons on page 1. 16 Q. Do you recall that it includes, for example, analysts at 17 Diamondback? 18 A. Yes. 19 Q. It says: Each covered person must notify the compliance 20 department promptly if the covered person opens any new 21 accounts. 22 Do you see that? 23 A. Yes. 24 Q. So if you open an account while you're an employee at 25 Diamondback you are supposed to notify the compliance</p>	<p>CBLMNEW3 Hadlock - cross Page 1347</p> <p>1 the restrictions, is that right? 2 A. Yes. 3 Q. If you could go to what is number 6, closed-end ETFs? 4 A. Yes. 5 Q. And it says: A covered person may buy or sell closed-end 6 ETFs. Did you understand that closed-end ETFs are 7 exchange-traded funds that are traded on an exchange like the 8 NASDAQ, for example, is that right? 9 A. Correct. 10 Q. And it says: A covered person may buy or sell, correct? 11 A. Yes. 12 Q. But it's got a however, purchases or sales will require 13 compliance department preclearance as follows. 14 Do you see that? 15 A. Yes. 16 Q. And it has a couple of bullets that are sector-based ETFs 17 falling within a covered person's sector. 18 Do you see that? 19 A. Yes. 20 Q. Does that mean, for example, if you trade in a technology 21 fund that technology sector ETFs would have to have 22 preclearance, is that right? 23 A. Yes. 24 Q. And then under that it says: Broad-based ETFs that are 25 traded within any Diamondback portfolio that a covered person</p>

<p>CBLMNEW3 Hadlock - cross Page 1348</p> <p>1 is assigned to.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Now, broad-based ETFs are ones that are not sector specific</p> <p>5 but I have a bundle or represent a bundle of stocks that</p> <p>6 perhaps over multiple sectors or that represents the NASDAQ</p> <p>7 generally, for example.</p> <p>8 Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. And what this says is that if you have a broad-based ETF,</p> <p>11 one of the ones that we just described that is traded within</p> <p>12 the portfolio that you are assigned to that you have to get</p> <p>13 preclearance, is that right?</p> <p>14 A. Yes.</p> <p>15 Q. So if you're an analyst and your portfolio manager trades</p> <p>16 in a broad-based ETF as we have described, then you have to get</p> <p>17 preclearance before you trade in that yourself in your own</p> <p>18 personal account, is that right?</p> <p>19 A. Correct.</p> <p>20 Q. Do you know one way or the other whether Jesse Tortora ever</p> <p>21 reported any ETF trades or got any preclearance for any ETF</p> <p>22 trades to compliance? Were you ever asked for that, to your</p> <p>23 knowledge, one way or the other?</p> <p>24 A. I have no knowledge.</p> <p>25 Q. Do you know one way or the other whether he ever provided</p>	<p>CBLMNEW3 Hadlock - cross Page 1350</p> <p>1 Q. Start with the top portion. This is a soft dollar request</p> <p>2 form similar in type to the couple that Ms. Apps showed you, is</p> <p>3 that right?</p> <p>4 A. Yes.</p> <p>5 Q. And this says it's for a vendor named Ruchi Goyal.</p> <p>6 You see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know whether Ruchi Goyal is a man or a woman, by the</p> <p>9 way?</p> <p>10 A. No.</p> <p>11 Q. No idea, right?</p> <p>12 A. No idea.</p> <p>13 Q. You can't tell by this name whether Ruchi Goyal is a man or</p> <p>14 a woman, is that right?</p> <p>15 A. No, I can't.</p> <p>16 Q. The date on this is January 23, '08, is that right?</p> <p>17 A. Yes.</p> <p>18 Q. You see the requester, it says Todd Newman/Jesse Tortora,</p> <p>19 is that right?</p> <p>20 A. Yes.</p> <p>21 Q. You'll see the total is 18,750 quarterly.</p> <p>22 You see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know one way or the other who brought Ruchi Goyal on</p> <p>25 as a consultant at Diamondback other than what you are seeing</p>
<p>CBLMNEW3 Hadlock - cross Page 1349</p> <p>1 account statements to compliance?</p> <p>2 A. Not directly, but I would know if he didn't.</p> <p>3 Q. You would know if he didn't?</p> <p>4 A. Yes.</p> <p>5 Q. I'd like you to look at Defense Exhibit 8663, which I</p> <p>6 believe in your binder is tab 9.</p> <p>7 Now you'll see, Mr. Hadlock, that Defense Exhibit 8663</p> <p>8 is a multiple-page document.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Now, tell me, you recognize the first page of this</p> <p>12 document?</p> <p>13 A. I recognize it as a soft dollar request form.</p> <p>14 Q. Do you recognize the other pages in this particular</p> <p>15 document?</p> <p>16 A. Specifically, no. I know what a W9 is.</p> <p>17 Q. How about the last page?</p> <p>18 A. I don't recall seeing it, but it looks like some sort of</p> <p>19 soft dollar request.</p> <p>20 MR. NATHANSON: The defense offers 8663, your Honor.</p> <p>21 MS. APPS: No objection.</p> <p>22 THE COURT: Defense 8663 is received.</p> <p>23 (Defendant's Exhibit 8663 received in evidence)</p> <p>24 MR. NATHANSON: If you can publish that. If you can</p> <p>25 just highlight the document.</p>	<p>CBLMNEW3 Hadlock - cross Page 1351</p> <p>1 here?</p> <p>2 A. No.</p> <p>3 MR. NATHANSON: If you could just, Mr. McLeod, blow up</p> <p>4 the bottom portion of that. Thank you.</p> <p>5 Q. And that's your signature, Mr. Hadlock?</p> <p>6 A. Yes.</p> <p>7 Q. So you're approving this soft dollar request form with</p> <p>8 respect to this particular soft dollar vendor Ruchi Goyal, is</p> <p>9 that right?</p> <p>10 A. Yes.</p> <p>11 Q. You'll see that there is a name Anthony Bechalany?</p> <p>12 A. Bechalany.</p> <p>13 Q. And he is the head trader at Diamondback, is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And in addition to a compliance officer, Mr. Bechalany is</p> <p>16 the head trader on signing off on all soft dollar request</p> <p>17 forms, is that right?</p> <p>18 A. Yes.</p> <p>19 Q. You'll see on the top portion that's blown up, it says,</p> <p>20 description, please see invoice attached.</p> <p>21 You see it says that?</p> <p>22 A. Yes, I see that.</p> <p>23 Q. And then if you go to the second page of this document,</p> <p>24 this has an invoice that says Ruchi Goyal and then it's got the</p> <p>25 amount, 18,750.</p>

<p>CBLMNEW3 Hadlock - cross Page 1352</p> <p>1 You see that?</p> <p>2 A. Yes.</p> <p>3 Q. Then it's got service provided and it says: Research</p> <p>4 consulting services to Diamondback Capital Management,</p> <p>5 including market research, industry and company analysis, and</p> <p>6 network with industry contacts for the semiconductors and IT</p> <p>7 hardware industries.</p> <p>8 You see that?</p> <p>9 A. Yes.</p> <p>10 Q. Is that a fairly standard description of what an individual</p> <p>11 consultant, what kind of service they might provide to</p> <p>12 Diamondback?</p> <p>13 A. Yes.</p> <p>14 Q. And then you'll see the period October 9, 2007 to December</p> <p>15 31, 2007 and then the invoice is dated January 2, 2008.</p> <p>16 You see that?</p> <p>17 A. Yes.</p> <p>18 Q. Am I right that nothing about this invoice and the soft</p> <p>19 dollar request form that you signed, nothing stands out to you</p> <p>20 as unusual or suspicious in any way, based on the face of these</p> <p>21 documents, isn't that right?</p> <p>22 A. Correct.</p> <p>23 MR. NATHANSON: Then if we could quickly go to the</p> <p>24 fourth page of the document, and if we could just blow that up</p> <p>25 so the jury can see it.</p>	<p>CBLMNEW3 Hadlock - cross Page 1354</p> <p>1 Q. So even if Jesse Tortora brings on a consultant or has the</p> <p>2 relationship with a consultant, as the portfolio manager</p> <p>3 Mr. Newman would have to sign these forms, isn't that right?</p> <p>4 A. Yes.</p> <p>5 Q. And this, you'll see, has a purpose and it says: Quarterly</p> <p>6 allocation for research services. And you'll see it's a</p> <p>7 similar description from the one we saw previously, is that</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. Now, if we can go to Government Exhibit 2269 in evidence.</p> <p>11 I believe Ms. Apps showed you this document.</p> <p>12 Do you recall that?</p> <p>13 A. Yes.</p> <p>14 Q. And, again, this is another soft dollar request form. It's</p> <p>15 for a little later in 2008. This one, July 17. It's got the</p> <p>16 cost. It says: Requester in this case, Mr. Tortora. Vendor.</p> <p>17 And it was approved by, it looks like Ms. Magee -- is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. -- in your stead and Mr. Bechalany, and I believe there is</p> <p>21 a signature. If we could just scroll a little down on the</p> <p>22 bottom portion, you'll see that there is a scrawl there. I</p> <p>23 don't know if you recognize this as Mr. Newman's signature or</p> <p>24 not. But there is a purported signature of the portfolio</p> <p>25 manager below, Mr. Bechalany, right?</p>
<p>CBLMNEW3 Hadlock - cross Page 1353</p> <p>1 Q. You'll see this is attached and it's a soft dollar request</p> <p>2 and this is from the prior year, December 6, '07.</p> <p>3 You see that?</p> <p>4 A. Yes.</p> <p>5 Q. Now, this says Mark Hadlock, CCO, highlighted.</p> <p>6 That's not your signature, is it?</p> <p>7 A. No.</p> <p>8 Q. Do you recognize that as Cathy Magee's signature?</p> <p>9 A. Yes.</p> <p>10 Q. And from time to time she would sign in your stead these</p> <p>11 soft dollar request forms, is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And that's because she was essentially your designee in the</p> <p>14 compliance function, right?</p> <p>15 A. Yes.</p> <p>16 Q. And it's also signed by Mr. Bechalany, right?</p> <p>17 A. Yes.</p> <p>18 Q. And by, in this case, Todd Newman as the portfolio manager,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. And is my understanding correct that even if an analyst</p> <p>22 brings on a soft dollar consultant, the portfolio manager is</p> <p>23 the individual who has to approve it from within the team that</p> <p>24 the analyst is on, isn't that right?</p> <p>25 A. Yes.</p>	<p>CBLMNEW3 Hadlock - cross Page 1355</p> <p>1 A. Yes.</p> <p>2 MR. NATHANSON: If we can go to the second page of</p> <p>3 that document and blow that up, if you will.</p> <p>4 Q. That, again, that's a similar invoice to the one that we</p> <p>5 had seen with respect to the prior soft dollar request form,</p> <p>6 same description, very similar.</p> <p>7 Wouldn't you agree?</p> <p>8 A. Yes.</p> <p>9 Q. Nothing again suspect on the face of these documents with</p> <p>10 respect to this invoice or the soft dollar request form</p> <p>11 generally, isn't that right?</p> <p>12 A. Yes.</p> <p>13 Q. If we could go now to Government Exhibit 2270. And this</p> <p>14 was another form that Ms. Apps showed you, soft dollar request</p> <p>15 form, this one from December 23 of 2008.</p> <p>16 You see that?</p> <p>17 A. Yes.</p> <p>18 Q. It's got a total cost of \$145,000.</p> <p>19 You see that?</p> <p>20 A. Yes.</p> <p>21 Q. Again, this happens to be your signature, isn't that right?</p> <p>22 A. Yes.</p> <p>23 Q. And the date we just saw of December 23, '08, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Let's go to the second page of that document which Ms. Apps</p>

<p>CBLMNEW3 Hadlock - cross Page 1356</p> <p>1 also showed you.</p> <p>2 And you'll recognize the date here is December 19,</p> <p>3 2008. That's four days prior to the form itself, correct? In</p> <p>4 other words, the form itself was December 23, I think we just</p> <p>5 established?</p> <p>6 A. Yes.</p> <p>7 Q. And this is four days prior, on December 19, isn't that</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And it's from Mr. Newman to Ms. Magee and Lauren Conant.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Ms. Magee, we have talked about, was one of your</p> <p>14 subordinates who both had an HR and compliance function. And</p> <p>15 Ms. Conant, who was she?</p> <p>16 A. She worked for Cathy.</p> <p>17 Q. She was an assistant to Cathy, essentially?</p> <p>18 A. Yes.</p> <p>19 Q. And did she have an administrative function with respect to</p> <p>20 the soft dollar request forms?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. And this says: Subject for Mr. Newman, he appears to have</p> <p>23 written subject. Consultant bonuses for 2008.</p> <p>24 You see that?</p> <p>25 A. Yes.</p>	<p>CBLMNEW3 Hadlock - cross Page 1358</p> <p>1 documents Mr. Newman was describing the components of that</p> <p>2 \$145,000 as a bonus on that e-mail? I understand that you</p> <p>3 don't recognize it, but it's got bonus and it has three</p> <p>4 different components and they add up to \$145,000, correct?</p> <p>5 A. Yes.</p> <p>6 MR. NATHANSON: No further questions.</p> <p>7 MS. APPS: Just a little bit on redirect.</p> <p>8 THE COURT: Any cross?</p> <p>9 MR. MORVILLO: What, am I chopped liver?</p> <p>10 Now that I made a big stink about it, no further</p> <p>11 questions.</p> <p>12 THE COURT: Redirect.</p> <p>13 MS. APPS: May I proceed.</p> <p>14 REDIRECT EXAMINATION</p> <p>15 BY MS. APPS:</p> <p>16 Q. Mr. Hadlock, if you could turn back to Government Exhibit</p> <p>17 2251 which you were asked about. You were specifically</p> <p>18 directed to page 3 of the document which at the bottom has G-2.</p> <p>19 It's 2251. And you were asked about the paragraph that is</p> <p>20 headed contacts with public companies. You were asked about</p> <p>21 the first sentence. The advisor may make investment decisions</p> <p>22 on the basis of the firm's conclusions formed through contacts</p> <p>23 and analysis of publicly-available information regarding</p> <p>24 foreign and U.S. companies.</p> <p>25 Now, I want to ask you about the rest of the</p>
<p>CBLMNEW3 Hadlock - cross Page 1357</p> <p>1 Q. It says: Below is a list of bonus Mtec wants to pay out.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Again, this is written from Mr. Newman to Ms. Magee, who is</p> <p>5 a member of compliance, and Ms. Conant, who is the assistant.</p> <p>6 Then it's got bonus for 2008 and it's got one, two, three</p> <p>7 entries. And you'll agree, will you not, that they add up to</p> <p>8 \$145,000?</p> <p>9 A. Yes.</p> <p>10 Q. And that's the total that's on the prior page, 145,000, on</p> <p>11 the soft dollar request form that you signed, is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And, again, if you go to the last page of that document,</p> <p>14 that's the last page -- the one that says Ruchi Goyal on it.</p> <p>15 Do you see that page?</p> <p>16 A. Yes.</p> <p>17 Q. And, again, this is an invoice, it's got 100,000 on it,</p> <p>18 similar descriptions to the one we have seen before. It's got</p> <p>19 a period, which is October 9, 2007 through September 30, 2008,</p> <p>20 and then it's got a date from January 8, 2009. So this looks</p> <p>21 like a later date. But the invoice description is the same</p> <p>22 description that we had seen before in those prior invoices,</p> <p>23 isn't that right?</p> <p>24 A. Yes.</p> <p>25 Q. You would agree, would you not, that on those last</p>	<p>CBLMNEW3 Hadlock - redirect Page 1359</p> <p>1 paragraph. It continues with difficult legal issues arise,</p> <p>2 however, when, in the course of these contacts, an employee of</p> <p>3 the advisor, Diamondback, becomes aware of material, nonpublic</p> <p>4 information about those companies.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And then it continues: This could happen, for example, if</p> <p>8 a company's chief financial officer prematurely discloses</p> <p>9 quarterly results to an analyst or an investor relations</p> <p>10 representative makes a selective disclosure of adverse news to</p> <p>11 a handful of investors.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Then it continues: In such situations, you should contact</p> <p>15 the compliance officer immediately if you believe that you may</p> <p>16 have received material, nonpublic information about a company.</p> <p>17 In 2008, just to be clear, in 2008 and 2009, up until</p> <p>18 late 2009, you were the chief compliance officer, is that fair</p> <p>19 to say?</p> <p>20 A. Yes.</p> <p>21 Q. Do you ever remember Mr. Newman asking you any questions</p> <p>22 about information he received?</p> <p>23 A. I don't recall.</p> <p>24 Q. You don't recall that he ever did?</p> <p>25 A. I don't recall speaking to Todd about any nonpublic</p>

<p>CBLMNEW3 Hadlock - redirect Page 1360</p> <p>1 information.</p> <p>2 Q. And Mr. Nathanson also asked you about what's in evidence</p> <p>3 as Government Exhibit 2253. And in particular he asked you --</p> <p>4 actually, along similar lines there is a page in 2253 with F3</p> <p>5 on the bottom. It's actually the fourth page of the document.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. He asked you again about what's in the box. And he asked</p> <p>9 you about the first sentence, the determination of whether</p> <p>10 information is material or nonpublic or whether there exists a</p> <p>11 duty of confidentiality may be difficult to make. Therefore,</p> <p>12 you should consult legal compliance if you have any questions</p> <p>13 about information in your possession.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Again, do you recall if Mr. Newman ever came to you and</p> <p>17 asked you about information he received that could be material</p> <p>18 or nonpublic information?</p> <p>19 A. I don't recall.</p> <p>20 Q. Mr. Nathanson asked you about some other portions of this</p> <p>21 manual. I just want to quickly go there. If you can look at</p> <p>22 what's marked at the bottom as page F-5, which is the sixth</p> <p>23 page of the document. He asked you about the portion a little</p> <p>24 after halfway down where it talks about contacts with public</p> <p>25 companies.</p>	<p>CBLMNEW3 Hadlock - redirect Page 1362</p> <p>1 A. Yes.</p> <p>2 Q. In other words, if you are speaking to public company</p> <p>3 employees, what is the rule about -- withdrawn.</p> <p>4 It refers to this policy and procedures on</p> <p>5 communicating with consultants.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And did we look at that earlier today? Do you recall?</p> <p>9 A. Yes.</p> <p>10 Q. Have a look at 2271.</p> <p>11 That was the e-mail blast with the attachment of the</p> <p>12 policy. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. If you look at appendix, policy attached to that e-mail,</p> <p>15 the heading there, policy and procedures for communicating with</p> <p>16 consultants.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And the first paragraph makes it clear -- look at the first</p> <p>20 paragraph of this policy, Mr. Hadlock. Do you see there it</p> <p>21 says: In communicating with the consultants. Advisor should</p> <p>22 conduct its activities in a manner designed to avoid the</p> <p>23 receipt and misuse of material nonpublic information and to</p> <p>24 comply with appendix G, policy and procedures to prevent</p> <p>25 insider trading.</p>
<p>CBLMNEW3 Hadlock - redirect Page 1361</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And he asked you about the first paragraph there where it</p> <p>4 says: Contacts with public companies represent an important</p> <p>5 part of the advisor's research efforts. The advisor may make</p> <p>6 investment decisions based upon conclusions reached through</p> <p>7 discussions with such contacts and analysis of</p> <p>8 publicly-available information.</p> <p>9 I want to ask you a little bit further down on the</p> <p>10 same page. It says: When speaking to officers, directors,</p> <p>11 employees or agents of a public company -- and I skipped over a</p> <p>12 couple of words -- you must ensure that such person understands</p> <p>13 that you are not seeking any material nonpublic information.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And in the next sentence then it references different</p> <p>17 policies and procedures for communicating with consultants.</p> <p>18 Do you see that?</p> <p>19 A. I'm sorry. Could you repeat that?</p> <p>20 Q. In the same paragraph, which is highlighted, it continues:</p> <p>21 When interacting with a third-party research consultants by the</p> <p>22 advisor, you must comply with Diamondback's consultant policy</p> <p>23 and procedures, and there is a reference to policy and</p> <p>24 procedures for communicating with consultants.</p> <p>25 Do you see that?</p>	<p>CBLMNEW3 Hadlock - redirect Page 1363</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Again, with respect to talking to public company employees,</p> <p>4 if you could turn the page and look at Section C. And did this</p> <p>5 portion of the policy permit contact with consultants who were</p> <p>6 employed by public companies?</p> <p>7 MR. NATHANSON: Objection, your Honor. Asked and</p> <p>8 answered.</p> <p>9 THE COURT: Overruled. I'll allow it.</p> <p>10 A. Could you repeat the question, please?</p> <p>11 Q. What did this portion of the policy permit or not permit</p> <p>12 when a research analyst at Diamondback is talking to a public</p> <p>13 company employee?</p> <p>14 A. If a research analyst intends to pay someone for research,</p> <p>15 that person could not be working at the public company that</p> <p>16 they were talking about. And if they were previously employed</p> <p>17 by that company, there had to be a six-month garden leave.</p> <p>18 Q. Did Diamondback policies permit a research analyst at</p> <p>19 Diamondback to talk to a public company insider about that</p> <p>20 company?</p> <p>21 A. It depends what you mean by insider. Were they allowed to</p> <p>22 pay somebody for that information? No. Could they talk to</p> <p>23 somebody at a public company? Yes.</p> <p>24 Q. This policy in particular, when it talks about hiring</p> <p>25 consultants and paying public company employees, were the</p>

<p>CBLMNEW3 Hadlock - redirect Page 1364</p> <p>1 expert networking firms paid by Diamondback?</p> <p>2 A. Yes.</p> <p>3 Q. When Diamondback is paying for research services, is it</p> <p>4 fair to say that if an analyst is talking to a public company</p> <p>5 employee, were they permitted or not permitted to give</p> <p>6 information about that company?</p> <p>7 A. Not permitted.</p> <p>8 Q. Mr. Nathanson asked you a few questions about soft dollar</p> <p>9 payers.</p> <p>10 Who did the discretion over how to use soft dollar</p> <p>11 money for research services within Diamondback?</p> <p>12 A. The portfolio managers put the request in.</p> <p>13 MS. APPS: One moment, your Honor.</p> <p>14 Nothing further.</p> <p>15 RECROSS EXAMINATION</p> <p>16 BY MR. NATHANSON:</p> <p>17 Q. Mr. Hadlock, you said just a moment ago that the policy on</p> <p>18 paid consultants was that they weren't allowed to pay the</p> <p>19 public company -- you weren't allowed to pay consultants with</p> <p>20 respect to talking about the public company they were talking</p> <p>21 about, is that right? In other words, if you're at company X,</p> <p>22 the policy, as you understood it, said that you couldn't pay</p> <p>23 them to pay the consultant to talk about their own company, is</p> <p>24 that right?</p> <p>25 A. Correct.</p>	<p>CBLMNEW3 Hadlock - recross Page 1366</p> <p>1 Q. Diamondback had a restricted list, isn't that right?</p> <p>2 A. Yes.</p> <p>3 Q. And from time to time professionals came to compliance and</p> <p>4 said that they wanted to put things on the restrictive list,</p> <p>5 isn't that right?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall that Mr. Newman in fact came to compliance</p> <p>8 from time to time?</p> <p>9 A. I don't recall.</p> <p>10 Q. You don't recall one way or the other?</p> <p>11 A. I don't recall one way or another.</p> <p>12 Q. I want to show you what's marked Defense Exhibit 9055 and</p> <p>13 it's tab 4 in your binder.</p> <p>14 Do you recognize that type of document, Mr. Hadlock?</p> <p>15 A. Yes.</p> <p>16 Q. And that's a restricted list, isn't it?</p> <p>17 A. Yes.</p> <p>18 Q. And this one happens to be from May 13, 2009.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And it goes out to all Diamondback employees, right?</p> <p>22 A. Yes.</p> <p>23 Q. It would go out to you among everybody else, right?</p> <p>24 A. Yes.</p> <p>25 MR. NATHANSON: Defense offers 9055.</p>
<p>CBLMNEW3 Hadlock - recross Page 1365</p> <p>1 Q. You could pay them to talk about a competitor supplier, et</p> <p>2 cetera, not just their own company, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Now, you were also asked about whether you recalled</p> <p>5 instances in which Mr. Newman came to you and asked you about</p> <p>6 whether or not a piece of information might be a problem or not</p> <p>7 a problem or material or immaterial.</p> <p>8 Do you recall that you were asked about that?</p> <p>9 A. Yes.</p> <p>10 Q. And isn't it fair to say you don't recall one way or the</p> <p>11 other whether he came to you?</p> <p>12 A. When I say I don't recall, it means he might have, he might</p> <p>13 not have. I don't remember.</p> <p>14 Q. A lot of people in Diamondback, you've mentioned 125, 175</p> <p>15 employees. So fair to say you wouldn't remember every</p> <p>16 conversation you had with a professional about the subject,</p> <p>17 isn't that right?</p> <p>18 A. Correct.</p> <p>19 Q. Now, Diamondback had a restricted list, isn't that right?</p> <p>20 A. Yes.</p> <p>21 Q. And just so the jury --</p> <p>22 MS. APPS: Objection. Beyond the scope.</p> <p>23 MR. NATHANSON: Disagree, your Honor. This is about</p> <p>24 coming into compliance with respect to information --</p> <p>25 THE COURT: I'll allow a question or two.</p>	<p>CBLMNEW3 Hadlock - recross Page 1367</p> <p>1 MS. APPS: Objection, your Honor.</p> <p>2 THE COURT: Sustained. We don't need this. He has</p> <p>3 already testified that there was a restricted list.</p> <p>4 Q. Mr. Hadlock, do you recall that Mr. Newman came to</p> <p>5 compliance and asked them to put Wind River on the restricted</p> <p>6 list?</p> <p>7 A. I don't recall.</p> <p>8 MS. APPS: Objection.</p> <p>9 THE COURT: Sustained.</p> <p>10 MR. NATHANSON: Nothing further, your Honor.</p> <p>11 THE COURT: Anything else?</p> <p>12 MS. APPS: No, your Honor.</p> <p>13 THE COURT: You can step down, Mr. Hadlock. Good luck</p> <p>14 to your team on Saturday.</p> <p>15 THE WITNESS: Thanks.</p> <p>16 (Witness excused)</p> <p>17 THE COURT: Government, your next witness?</p> <p>18 MR. TARLOWE: The government calls Sandy Goyal.</p> <p>19 THE COURT: I thought we would go to 12:30 today,</p> <p>20 ladies and gentlemen.</p> <p>21 Does anybody need a bathroom break?</p> <p>22 Let's have a quick bathroom break and in five minutes</p> <p>23 we will come back and start this witness.</p> <p>24 (Jury not present)</p> <p>25 THE COURT: With respect to limiting instruction on</p>

<p>CBLMNEW3 Page 1368</p> <p>1 the compliance manual, is that acceptable to everybody?</p> <p>2 MR. NATHANSON: Yes, your Honor.</p> <p>3 MS. APPS: Yes.</p> <p>4 THE COURT: Then with respect to the instructions</p> <p>5 concerning the news articles that Mr. Morvillo had raised, is</p> <p>6 that sufficient?</p> <p>7 MR. MORVILLO: Yes, your Honor. I assume we have not</p> <p>8 heard from anybody.</p> <p>9 THE COURT: If we hear anything, I'll let you know.</p> <p>10 Anything else we should take up before I you have a</p> <p>11 bathroom break?</p> <p>12 See you in about five.</p> <p>13 (Recess)</p> <p>14 THE COURT: Let's bring in the jury.</p> <p>15 (Jury present)</p> <p>16 THE COURT: We will start with the government's next</p> <p>17 witness which I guess will be by Mr. Tarlowe.</p> <p>18 Who is the next witness, Mr. Tarlowe?</p> <p>19 MR. TARLOWE: The government calls Mr. Sandy Goyal.</p> <p>20 SANDEEP GOYAL,</p> <p>21 called as a witness by the Government,</p> <p>22 having been duly sworn, testified as follows:</p> <p>23 THE COURT: Mr. Goyal, let me ask you to keep your</p> <p>24 voice up, maybe move a little closer to the microphone. You</p> <p>25 are somewhat soft spoken. This is a very big room. Keep your</p>	<p>CBLMNEW3 Goyal - direct Page 1370</p> <p>1 Q. Did you attend school in Canada?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Did you receive any degrees?</p> <p>4 A. Yes, I did.</p> <p>5 Q. What degree or degrees did you receive while you were in</p> <p>6 Canada?</p> <p>7 A. I got master's in engineering.</p> <p>8 Q. When approximately was that?</p> <p>9 A. '97.</p> <p>10 Q. After receiving that degree did you go to work in Canada?</p> <p>11 A. Yes, I did.</p> <p>12 Q. What did you do?</p> <p>13 A. I worked as a software developer.</p> <p>14 Q. When did you move to the United States?</p> <p>15 A. 2001.</p> <p>16 Q. Why did you come to the United States at that time?</p> <p>17 A. To study.</p> <p>18 Q. Where did you study?</p> <p>19 A. University of Texas at Austin.</p> <p>20 Q. Did you graduate from the University of Texas at Austin?</p> <p>21 A. Yes, I did.</p> <p>22 Q. When?</p> <p>23 A. 2003.</p> <p>24 Q. What degree or degrees did you receive from the University</p> <p>25 of Texas at Austin?</p>
<p>CBLMNEW3 Page 1369</p> <p>1 voice up.</p> <p>2 Mr. Tarlowe, you may proceed.</p> <p>3 MR. TARLOWE: Thank you, your Honor.</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. TARLOWE:</p> <p>6 Q. Mr. Goyal, what name do you go by?</p> <p>7 A. Sandy.</p> <p>8 Q. How old are you?</p> <p>9 A. 40 years.</p> <p>10 Q. Where do you live?</p> <p>11 A. New Jersey.</p> <p>12 Q. Are you married?</p> <p>13 A. Yes, I am.</p> <p>14 Q. Do you have any children?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Where were you born?</p> <p>17 A. I was born in India.</p> <p>18 Q. How far did you go in school in India?</p> <p>19 A. I did my bachelor's degree there.</p> <p>20 Q. What did you get a degree in?</p> <p>21 A. Engineering.</p> <p>22 Q. When did you leave India?</p> <p>23 A. It was in 1995.</p> <p>24 Q. Where did you move to?</p> <p>25 A. Canada.</p>	<p>CBLMNEW3 Goyal - direct Page 1371</p> <p>1 A. Master's in business administration.</p> <p>2 Q. After receiving your master's in business administration or</p> <p>3 MBA, where did you go to work?</p> <p>4 A. Dell.</p> <p>5 Q. What is Dell?</p> <p>6 A. Dell is a manufacturer of personal computers.</p> <p>7 Q. What types of customers does Dell sell its products to?</p> <p>8 A. It sells it to all kind of customers, ranging from</p> <p>9 individual consumers to large companies.</p> <p>10 Q. Where does Dell sell its products?</p> <p>11 A. It sells its products worldwide.</p> <p>12 Q. Where are the company's headquarters located?</p> <p>13 A. Austin, Texas.</p> <p>14 Q. When you worked at Dell, which office did you work in?</p> <p>15 A. Austin.</p> <p>16 Q. How long did you work at Dell?</p> <p>17 A. Three years.</p> <p>18 Q. From when to when?</p> <p>19 A. May 2003 to May 2006.</p> <p>20 Q. During the time you worked at Dell from 2003 to 2006, did</p> <p>21 you have any role in preparing the company's quarterly earnings</p> <p>22 results?</p> <p>23 A. No.</p> <p>24 Q. How did you learn of the company's quarterly financial</p> <p>25 results during the time you worked at Dell?</p>

<p>CBLMNEW3 Goyal - direct Page 1372</p> <p>1 A. Through its public announcement.</p> <p>2 Q. During the time you worked at Dell, did you work in one</p> <p>3 department or more than one department?</p> <p>4 A. More than one.</p> <p>5 Q. Where did you work when you first started at Dell?</p> <p>6 A. Corporate planning.</p> <p>7 Q. Generally, what did you do during the time you were in</p> <p>8 corporate planning?</p> <p>9 A. I looked at market share of Dell and its competitors and</p> <p>10 projected it going forward.</p> <p>11 Q. What other department or departments did you work in at</p> <p>12 Dell?</p> <p>13 A. U.S. consumer.</p> <p>14 Q. What does that department do?</p> <p>15 A. That is mostly responsible for selling products online to</p> <p>16 U.S. customers, individual customers.</p> <p>17 Q. Generally, what did you do for the U.S. consumer</p> <p>18 department?</p> <p>19 A. I was involved in pricing strategy for overall the</p> <p>20 computer, as well as its parts, like memory or hard drive, with</p> <p>21 the goal to maximize profitability.</p> <p>22 Q. When you left Dell in 2006, where did you go to work?</p> <p>23 A. Prudential Equity Group.</p> <p>24 Q. Where was that job located?</p> <p>25 A. San Francisco.</p>	<p>CBLMNEW3 Goyal - direct Page 1374</p> <p>1 so on.</p> <p>2 Q. Do you recall who some of the people were who interviewed</p> <p>3 you for the job at Prudential?</p> <p>4 A. Yes.</p> <p>5 Q. Who interviewed you?</p> <p>6 A. It was Jesse Tortora, Sam Adondakis, and Mark Lipacis.</p> <p>7 Q. What was Mr. Lipacis' job at Prudential?</p> <p>8 A. He was senior semiconductor analyst.</p> <p>9 Q. He was an analyst for a different sector, different types</p> <p>10 of companies?</p> <p>11 A. Yes.</p> <p>12 Q. What was Mr. Adondakis' job at Prudential?</p> <p>13 A. He was associate analyst for semiconductors.</p> <p>14 Q. So he worked under Mr. Lipacis?</p> <p>15 A. Yes.</p> <p>16 Q. During your interview with Mr. Tortora, do you recall</p> <p>17 whether Dell came up?</p> <p>18 A. Yes.</p> <p>19 Q. What, if anything, do you recall Mr. Tortora asking you</p> <p>20 about Dell during your interview at Prudential?</p> <p>21 A. He asked if I have friends at Dell who would keep talking</p> <p>22 to me after I leave Dell.</p> <p>23 Q. What did you say?</p> <p>24 A. I said yes.</p> <p>25 Q. Was that the only thing that you and Mr. Tortora discussed</p>
<p>CBLMNEW3 Goyal - direct Page 1373</p> <p>1 Q. What was your title or position at Prudential?</p> <p>2 A. Associate analyst.</p> <p>3 Q. Who did you work for at Prudential?</p> <p>4 A. Jesse Tortora.</p> <p>5 Q. What was his position or title?</p> <p>6 A. He was senior analyst.</p> <p>7 Q. What were Mr. Tortora's general responsibilities as the</p> <p>8 senior analyst at Prudential?</p> <p>9 A. He would provide research report and stock recommendations</p> <p>10 to the clients.</p> <p>11 Q. What types of clients did Prudential have?</p> <p>12 A. This would be asset management firms and hedge funds.</p> <p>13 Q. What do you mean by asset management firms?</p> <p>14 A. Investment management firms which manage money for their</p> <p>15 clients.</p> <p>16 Q. What were your responsibilities as an associate analyst</p> <p>17 working under Mr. Tortora?</p> <p>18 A. I drafted the reports, I prepared the financial models, and</p> <p>19 I did other back-up work.</p> <p>20 Q. What kind of companies did you and Mr. Tortora cover during</p> <p>21 the time you were at Prudential?</p> <p>22 A. IT hardware companies.</p> <p>23 Q. What does that mean?</p> <p>24 A. Companies involved in making hardware, like PCs and servers</p> <p>25 and includes companies like Dell, HP, Apple, Lexmark, Sun, and</p>	<p>CBLMNEW3 Goyal - direct Page 1375</p> <p>1 about Dell during the interview process or did you discuss</p> <p>2 other things as well?</p> <p>3 A. There may have been general questions about how the company</p> <p>4 does in relation to the overall IT hardware sector and others.</p> <p>5 Q. When did you leave Prudential?</p> <p>6 A. Summer of 2007.</p> <p>7 Q. Why did you leave Prudential?</p> <p>8 A. The parent company Prudential shut down its equity group.</p> <p>9 Q. That was the group that you and Mr. Tortora worked in?</p> <p>10 A. Yes.</p> <p>11 Q. Did Prudential shut down all of the research equity</p> <p>12 operations or just that particular group?</p> <p>13 A. The whole equity research operations.</p> <p>14 Q. After you left Prudential in 2007, where did you go to</p> <p>15 work?</p> <p>16 A. Neuberger Berman.</p> <p>17 Q. Where was that job located?</p> <p>18 A. New York City.</p> <p>19 Q. What is Neuberger Berman?</p> <p>20 A. It's an investment management firm.</p> <p>21 Q. Which means what?</p> <p>22 A. It manages money for its clients.</p> <p>23 Q. What types of investors does Neuberger Berman manage money</p> <p>24 for?</p> <p>25 A. The clients range from individual clients to entities like</p>

<p>CBLMNEW3 Goyal - direct Page 1376</p> <p>1 public pension funds and others. 2 Q. And approximately, if you know, approximately how much 3 money does Neuberger Berman manage for its investors? 4 A. It's around \$100 billion in equities. 5 Q. By equities, what do you mean? 6 A. Stocks. 7 Q. What was your position or title at Neuberger Berman? 8 A. I was associate analyst. 9 Q. Who did you work for? 10 A. Fayad Abbasi. 11 Q. What was Mr. Abassi's position? 12 A. He was senior analyst. 13 Q. Did you know Mr. Abassi before that? 14 A. Yes. 15 Q. How did you know him? 16 A. He was Prudential's client and had once come to San 17 Francisco and had worked there. 18 Q. What were your responsibilities as an associate analyst at 19 Neuberger Berman? 20 A. It goes to draft research reports, preparing financial 21 models, talk to outside analysts, and talk to other third-party 22 providers. 23 Q. Who was the research intended for? 24 A. Neuberger Berman portfolio managers. 25 Q. What kind of companies did you and Mr. Abassi provide</p>	<p>CBLMNEW3 Goyal - direct Page 1378</p> <p>1 Q. Why? 2 A. I resigned. 3 Q. What happened before you resigned that ultimately led you 4 to resign? 5 A. I pleaded guilty to a couple of charges and was cooperating 6 with the government. 7 Q. What charges did you plead guilty to? 8 A. Two charges. One for securities fraud and one for 9 conspiracy to commit securities fraud. 10 Q. When did you plead guilty to those crimes? 11 A. It was some time in October or November 2011. 12 Q. What did you do to commit those crimes? 13 A. I got Dell's confidential information from Rob Ray and gave 14 it to Jesse Tortora. 15 Q. Prior to pleading guilty to those crimes, did you speak to 16 agents of the FBI? 17 A. Yes. 18 Q. When was the first time you spoke to the FBI? 19 A. July 2011. 20 Q. How did that come about? 21 A. They approached me. 22 Q. Where? 23 A. In New Jersey. 24 Q. Did you tell them at that time about Rob Ray? 25 A. No.</p>
<p>CBLMNEW3 Goyal - direct Page 1377</p> <p>1 research for? 2 A. Initially, I was involved in the IT hardware companies, 3 like Dell, HP, Apple. 4 Q. Did you later become responsible for other types of 5 companies as well? 6 A. Yes, I did. 7 Q. What types of companies were those? 8 A. Semiconductor companies. 9 Q. Did you continue to cover the IT hardware companies as 10 well? 11 A. Yes, I did. 12 Q. How, if at all, did the research reports that you prepared 13 at Neuberger Berman differ from the research reports that you 14 and Mr. Tortora had done at Prudential? 15 A. The audience was different. At Prudential the research was 16 meant for external clients and there were a lot of them. At 17 Neuberger they were meant for internal Neuberger Berman 18 portfolio managers. 19 Q. What was the role of those portfolio managers within 20 Neuberger Berman? 21 A. They buy and sell stocks. 22 Q. Do you still work for Neuberger Berman today? 23 A. No. 24 Q. When did you stop working there? 25 A. January 2012.</p>	<p>CBLFNEW4 Goyal - direct Page 1379</p> <p>1 Q. Did you tell them at that time that you had made educated 2 guesses about Dell? 3 A. Yes. 4 Q. When you said that, were you referring to information you 5 received from Rob Ray? 6 A. No. 7 Q. Did you meet with the FBI again after that first day? 8 A. Yes. 9 Q. Approximately how soon or how much after that initial 10 approach? 11 A. About a week later. 12 Q. Did you tell them at that time about Rob Ray? 13 A. Yes. 14 Q. Who mentioned Rob Ray first? You or the government? 15 A. I did. 16 Q. What is the maximum sentence that you face on the charges 17 you pled guilty to? 18 A. 25 years. 19 Q. Did you plead guilty to those charges pursuant to an 20 agreement between you and the United States Attorney's Office? 21 A. Yes. 22 Q. I'm handing you what's been marked for identification as 23 3507-2. You could take a look at that, Mr. Goyal. Do you 24 recognize that document? 25 A. Yes.</p>

<p>CBLFNEW4 Goyal - direct Page 1380</p> <p>1 Q. What is it?</p> <p>2 A. It's the cooperation agreement.</p> <p>3 Q. Cooperation agreement between you and the United States</p> <p>4 Attorney's Office?</p> <p>5 A. U.S. -- yes.</p> <p>6 Q. If you could turn to the last page. Do you recognize your</p> <p>7 signature on that page?</p> <p>8 A. Yes.</p> <p>9 Q. Now, in that cooperation agreement did you agree to</p> <p>10 cooperate with the government?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Are you testifying today pursuant to that agreement?</p> <p>13 A. Yes.</p> <p>14 Q. Have you been sentenced yet?</p> <p>15 A. No.</p> <p>16 Q. Who will decide your sentence?</p> <p>17 A. The judge.</p> <p>18 Q. What's your understanding of what your obligations are</p> <p>19 under that agreement?</p> <p>20 A. To tell everything truthfully, to not commit any crime and</p> <p>21 to testify if and when the government wants.</p> <p>22 Q. What's your understanding as to what the United States</p> <p>23 Attorney's Office will do if you satisfy your obligations under</p> <p>24 that agreement?</p> <p>25 A. It will write a 5K1 letter to the judge.</p>	<p>CBLFNEW4 Goyal - direct Page 1382</p> <p>1 Q. While you worked at Neuberger Berman did you have a visa?</p> <p>2 A. Yes.</p> <p>3 Q. What kind?</p> <p>4 A. Employment visa.</p> <p>5 Q. At the time you pled guilty, did you tell Neuberger Berman</p> <p>6 about your guilty plea?</p> <p>7 A. No.</p> <p>8 Q. Why not?</p> <p>9 A. Because I was cooperating with the government and that was</p> <p>10 supposed to be secret, it was all under seal.</p> <p>11 Q. Did there come a time when someone from the compliance</p> <p>12 department at Neuberger Berman asked to speak to you?</p> <p>13 A. Yes.</p> <p>14 Q. What did you do?</p> <p>15 A. I contacted my lawyers.</p> <p>16 Q. Did that occur after you had already plead guilty?</p> <p>17 A. Yes.</p> <p>18 Q. After speaking to your lawyer what did you do?</p> <p>19 A. I resigned.</p> <p>20 Q. What if anything happened to your visa when you resigned</p> <p>21 from Neuberger Berman?</p> <p>22 A. After some time it expires.</p> <p>23 Q. What is your current immigration status?</p> <p>24 A. I'm on deferred action status.</p> <p>25 Q. What do you understand that to mean?</p>
<p>CBLFNEW4 Goyal - direct Page 1381</p> <p>1 Q. What's your understanding of what will be included in that</p> <p>2 letter?</p> <p>3 A. It will describe the crimes I committed and the cooperation</p> <p>4 I have provided to the government.</p> <p>5 Q. Has anyone made any promises to you about what your</p> <p>6 sentence will be?</p> <p>7 A. No.</p> <p>8 Q. What is your understanding as to whether the government</p> <p>9 will recommend a particular sentence to the judge?</p> <p>10 A. My understanding is that the government won't recommend any</p> <p>11 sentence.</p> <p>12 Q. Will the outcome of this case have any effect on whether or</p> <p>13 not the United States Attorney's Office writes that letter to</p> <p>14 the judge?</p> <p>15 A. My understanding is that it won't have any effect.</p> <p>16 Q. What's your understanding as to whether the outcome of this</p> <p>17 case affects your sentence at all?</p> <p>18 A. It won't affect.</p> <p>19 Q. Are you a United States citizen?</p> <p>20 A. No.</p> <p>21 Q. When you moved to the United States, were you authorized to</p> <p>22 do so?</p> <p>23 A. Yes.</p> <p>24 Q. What kind of authorization did you have?</p> <p>25 A. Student. Student visa.</p>	<p>CBLFNEW4 Goyal - direct Page 1383</p> <p>1 A. It means that my current stay in the U.S. is lawful and I</p> <p>2 can't be deported.</p> <p>3 Q. Can or cannot?</p> <p>4 A. Cannot, I won't.</p> <p>5 Q. Is there a time when that deferment expires?</p> <p>6 A. Yes.</p> <p>7 Q. When is that?</p> <p>8 A. April of 2013.</p> <p>9 Q. Who applied for that deferred action status for you?</p> <p>10 A. The government.</p> <p>11 Q. Did the government apply for deferred action for anyone</p> <p>12 else in your family?</p> <p>13 A. Yes.</p> <p>14 Q. Who?</p> <p>15 A. My wife.</p> <p>16 Q. Has anyone made any promises to you about what will happen</p> <p>17 when the deferred action expires?</p> <p>18 A. No.</p> <p>19 Q. Now, I want to go back for a moment, for a few moments to</p> <p>20 the time when you worked at Prudential. When you worked at</p> <p>21 Prudential, what are some of the ways in which you obtained</p> <p>22 information about the companies that you were covering?</p> <p>23 A. We looked at the public earnings announcement, we looked</p> <p>24 at, read transcripts of various or slide shows of various</p> <p>25 presentations by management in the various conferences. We</p>

<p>CBLFNEW4 Goyal - direct Page 1384</p> <p>1 talked to investor relations and company management and then</p> <p>2 followed the news on different websites and also got some data</p> <p>3 from some third party resources.</p> <p>4 Q. When you worked at Neuberger Berman, did you generally</p> <p>5 obtain information in the same way or a different way?</p> <p>6 A. It was pretty much same except that we had couple of extra</p> <p>7 resources, providers and also we also talked to sell side</p> <p>8 analysts.</p> <p>9 Q. You mentioned that one of the ways in which you obtained</p> <p>10 information about companies was speaking to management of those</p> <p>11 companies.</p> <p>12 A. Yes.</p> <p>13 Q. If you wanted to speak to the management of companies you</p> <p>14 were covering, how did you go about doing that generally?</p> <p>15 A. Normally we would contact investor relations.</p> <p>16 Q. Why?</p> <p>17 A. That is the normal protocol.</p> <p>18 Q. Were there any other ways in which you obtained information</p> <p>19 about Dell that you used for your work at Prudential?</p> <p>20 A. Yes.</p> <p>21 Q. How?</p> <p>22 A. I talked to my friends at Dell.</p> <p>23 Q. Approximately how many people?</p> <p>24 A. Around five.</p> <p>25 Q. How did you know those people?</p>	<p>CBLFNEW4 Goyal - direct Page 1386</p> <p>1 Q. When you were at Prudential, what did you do with the</p> <p>2 information that you got from those friends at Dell?</p> <p>3 A. I gave it to Jesse.</p> <p>4 Q. Jesse Tortora?</p> <p>5 A. Yes.</p> <p>6 Q. What if anything did you tell Mr. Tortora about where you</p> <p>7 got that information from?</p> <p>8 A. I told him that I got it from my friends.</p> <p>9 Q. Did you tell him where those friends worked?</p> <p>10 A. Yes, at Dell.</p> <p>11 Q. Did you tell Mr. Tortora their names?</p> <p>12 A. No.</p> <p>13 Q. When you first joined Neuberger Berman, did you continue</p> <p>14 speaking to those friends at Dell?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ask them about Dell's business?</p> <p>17 A. Yes.</p> <p>18 Q. Did they continue to provide information to you about their</p> <p>19 respective business segments?</p> <p>20 A. Yeah, general business conditions in their segments.</p> <p>21 Q. What did you do with the information you got from those</p> <p>22 friends when you worked at Neuberger Berman?</p> <p>23 A. I gave it to Jesse and also to some folks at Neuberger</p> <p>24 Berman.</p> <p>25 Q. At that time, when you were at Neuberger Berman where was</p>
<p>CBLFNEW4 Goyal - direct Page 1385</p> <p>1 A. They were my personal friends from my days back in Austin.</p> <p>2 Q. How did you communicate with them?</p> <p>3 A. Normally on phone or sometimes permanent visits.</p> <p>4 Q. Where would those personal visits take place?</p> <p>5 A. Austin.</p> <p>6 Q. What is in Austin?</p> <p>7 A. Dell's headquarters.</p> <p>8 Q. What kind of information did those friends provide to you</p> <p>9 when you were at Prudential?</p> <p>10 A. It was generally about business conditions in their</p> <p>11 respective segments.</p> <p>12 Q. When you say segments, what do you mean?</p> <p>13 A. Like Dell has a lot of segments, for example, U.S.</p> <p>14 consumer, small and medium businesses, then large enterprise,</p> <p>15 public and other groups.</p> <p>16 Q. What were some of the business segments in which your</p> <p>17 friends worked?</p> <p>18 A. U.S. consumer, U.S. commercial, product group, that's it.</p> <p>19 Q. What do you mean by product group?</p> <p>20 A. It's a group that's involved in laying out, developing</p> <p>21 products for the company.</p> <p>22 Q. To your knowledge, did any of those people have access to</p> <p>23 Dell's quarterly financial results before they were announced</p> <p>24 to the public?</p> <p>25 A. No.</p>	<p>CBLFNEW4 Goyal - direct Page 1387</p> <p>1 Mr. Tortora working?</p> <p>2 A. Diamondback Capital.</p> <p>3 Q. What was his job there?</p> <p>4 A. He was an analyst there.</p> <p>5 Q. Who did he work for?</p> <p>6 A. Todd Newman.</p> <p>7 Q. What did you understand Mr. Newman's job to be at</p> <p>8 Diamondback Capital?</p> <p>9 A. He was Jesse's portfolio manager.</p> <p>10 Q. Have you ever met Mr. Newman yourself?</p> <p>11 A. Once.</p> <p>12 Q. You could take a look, Mr. Goyal, you should have a binder</p> <p>13 in front of you. You could take a look at what's marked for</p> <p>14 identification as Government Exhibit 755. Do you see that,</p> <p>15 Mr. Goyal?</p> <p>16 A. Yes.</p> <p>17 Q. What is that?</p> <p>18 A. It is an e-mail from me.</p> <p>19 Q. To who?</p> <p>20 A. To Fayad Abbasi.</p> <p>21 Q. What's the date?</p> <p>22 A. Date is January 7, 2008.</p> <p>23 MR. TARLOWE: Government offers Government Exhibit</p> <p>24 755.</p> <p>25 THE COURT: Any objection?</p>

<p>CBLFNEW4 Goyal - direct Page 1388</p> <p>1 MR. FISHBEIN: No objection.</p> <p>2 THE COURT: Government Exhibit 755 is received.</p> <p>3 (Government's Exhibit 755 received in evidence)</p> <p>4 Q. At that time, Mr. Goyal, January 7, 2008, where were you</p> <p>5 working?</p> <p>6 A. Neuberger Berman.</p> <p>7 Q. And you sent the e-mail to Mr. Abbasi and you testified</p> <p>8 that you worked for Mr. Abbasi, is that correct?</p> <p>9 A. True.</p> <p>10 Q. And you write: "Hi. I visited Austin this weekend to meet</p> <p>11 with some contacts and here are some key points." Again, what</p> <p>12 is in Austin?</p> <p>13 A. Dell's headquarters.</p> <p>14 Q. Looking at the key points that you wrote below, numbers 1,</p> <p>15 2, 3 and 4, do those describe Dell's overall business or</p> <p>16 particular business segments?</p> <p>17 A. Particular business segments.</p> <p>18 Q. So number one references U.S. corporate business bit slow.</p> <p>19 Is that a reference to one of Dell's business segments?</p> <p>20 A. Yes.</p> <p>21 Q. Now, in number 1 it says, "Rich Garber beat me to this</p> <p>22 one." What did you mean by that?</p> <p>23 A. Rich Garber is a sell side analyst and he sent out a report</p> <p>24 either that morning or the day before, sometime just before</p> <p>25 that saying the same things, that U.S. corporate business is</p>	<p>CBLFNEW4 Goyal - direct Page 1390</p> <p>1 A. Yes.</p> <p>2 Q. When was that?</p> <p>3 A. Sometime late 2007.</p> <p>4 Q. Who did you get that information from?</p> <p>5 A. From Rob Ray.</p> <p>6 Q. When did you first meet Rob Ray?</p> <p>7 A. It was in business school 2002 or 2003.</p> <p>8 Q. That was at the University of Texas?</p> <p>9 A. Right.</p> <p>10 Q. Were you and Rob Ray in the same class in business school?</p> <p>11 A. No.</p> <p>12 Q. What did Rob Ray do after business school?</p> <p>13 A. He went to work at Dell.</p> <p>14 Q. Where were you working at the time?</p> <p>15 A. Dell.</p> <p>16 Q. What if any contact did you have with Rob Ray during the</p> <p>17 time you were both working at Dell?</p> <p>18 A. Once we were interviewing for an opposition in our team so</p> <p>19 I interviewed with him and then towards the end I may have had</p> <p>20 a couple of conversations with him, mostly regarding careers,</p> <p>21 career.</p> <p>22 Q. When you worked at Prudential, were you in contact with Rob</p> <p>23 Ray?</p> <p>24 A. Yes.</p> <p>25 Q. How? How did you communicate with him during that time?</p>
<p>CBLFNEW4 Goyal - direct Page 1389</p> <p>1 getting slower, there's a declining market.</p> <p>2 Q. Number 2, "U.S. consumer doing good." U.S. consumer, is</p> <p>3 that another business segment of Dell?</p> <p>4 A. Yes.</p> <p>5 Q. Number 3 you describe or you provide information about DIS,</p> <p>6 Dell International Services. Is that another business segment</p> <p>7 of Dell?</p> <p>8 A. Right.</p> <p>9 Q. What is that?</p> <p>10 A. This was basically, there's an India-based service team</p> <p>11 that used to take some phone calls which provided on-phone</p> <p>12 support service.</p> <p>13 Q. Number 4 you write, "SMB is just okay." What is SMB?</p> <p>14 A. Small and medium business.</p> <p>15 Q. Who did you get that information from, the information</p> <p>16 that's contained in that e-mail?</p> <p>17 A. From my friends.</p> <p>18 Q. Did the information in this e-mail come from Rob Ray?</p> <p>19 A. No.</p> <p>20 Q. Now, when Dell announces its quarterly financial results</p> <p>21 does it announce results for the consolidated overall company?</p> <p>22 A. Yes.</p> <p>23 Q. Now, did there come a time when you began to receive</p> <p>24 information about Dell's consolidated financial results as</p> <p>25 opposed to information about business segments?</p>	<p>CBLFNEW4 Goyal - direct Page 1391</p> <p>1 A. On e-mail or phone.</p> <p>2 Q. What did you talk to Mr. Ray about during the time you were</p> <p>3 working at Prudential?</p> <p>4 A. His career. Was mostly his career.</p> <p>5 Q. What sorts of things did you discuss about his career?</p> <p>6 A. His long-term career objectives and best way to reach</p> <p>7 there.</p> <p>8 Q. What if anything did he tell you about his long-term career</p> <p>9 objectives?</p> <p>10 A. He wanted to be working in investment management.</p> <p>11 Q. Again, meaning what?</p> <p>12 A. Investment management is either sell side research or buy</p> <p>13 side, basically managing clients' money putting into stocks.</p> <p>14 Q. Could you please take a look at what's marked for</p> <p>15 identification as Government Exhibit 700. Do you see that,</p> <p>16 Mr. Goyal?</p> <p>17 A. Not yet.</p> <p>18 Q. 700.</p> <p>19 A. Not sure if I have it here.</p> <p>20 THE COURT: In my book it's before 314A.</p> <p>21 A. Yes. I see it.</p> <p>22 Q. Is that an e-mail exchange between you and Rob Ray?</p> <p>23 A. Yes.</p> <p>24 Q. From September of 2006?</p> <p>25 A. Yes.</p>

<p>CBLFNEW4 Goyal - direct Page 1392</p> <p>1 MR. TARLOWE: Government offers Exhibit 700.</p> <p>2 MR. NATHANSON: No objection.</p> <p>3 THE COURT: Government Exhibit 700 is received.</p> <p>4 Q. Just looking briefly at the e-mail on the bottom, that's an</p> <p>5 e-mail from you to Rob Ray on September 27, 2006, is that</p> <p>6 correct?</p> <p>7 A. True.</p> <p>8 Q. You write, "How are you? Hope everything is going well.</p> <p>9 We are now fully settled here in SF." That means San</p> <p>10 Francisco?</p> <p>11 A. Yes.</p> <p>12 Q. What did you mean? Had you recently moved to San</p> <p>13 Francisco?</p> <p>14 A. Yes.</p> <p>15 Q. Why?</p> <p>16 A. To start working at Prudential Equities.</p> <p>17 Q. We could scroll up to Rob Ray's e-mail to you. You could</p> <p>18 blow up that whole thing with the date, please.</p> <p>19 In this e-mail Mr. Ray wrote to you, "Hey, Sandy.</p> <p>20 Great to hear from you. I have been thinking about sending you</p> <p>21 an e-mail for quite a while now but wanted to give you some</p> <p>22 time to settle down. Things are going well here in Austin. I</p> <p>23 wanted to call and chat with you sometime and get some feedback</p> <p>24 about your experience so far when you have a little time. As</p> <p>25 you know, I am extremely interested in the equity research area</p>	<p>CBLFNEW4 Goyal - direct Page 1394</p> <p>1 A. Yes, it is.</p> <p>2 MR. TARLOWE: Government offers Exhibit 701.</p> <p>3 MR. FISHBEIN: No objection.</p> <p>4 THE COURT: Government Exhibit 701 is received.</p> <p>5 MR. TARLOWE: Mr. Hoffman, if you could focus on the</p> <p>6 top e-mail down through the signature.</p> <p>7 Q. Mr. Goyal, what's shown on the screen, that's an e-mail</p> <p>8 from Rob Ray to you, is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And Mr. Rob Ray wrote to you, "Thanks so much for talking</p> <p>11 to me on the phone tonight. I really appreciate all the advice</p> <p>12 and feedback I received from you. As you know, I am extremely</p> <p>13 interested to break into this industry. So if you come to know</p> <p>14 of any opportunity, please let me know."</p> <p>15 When Mr. Ray wrote to you "I am extremely interested</p> <p>16 to break into this industry," what did you understand him to be</p> <p>17 referring to?</p> <p>18 A. Investment management.</p> <p>19 Q. When he wrote, "So if you come to know of any opportunity,</p> <p>20 please let me know," what did you understand him to be asking</p> <p>21 you to do?</p> <p>22 A. If I happen to know that there's some open positions</p> <p>23 somewhere somebody is looking for an associate or somebody</p> <p>24 else, I should let Rob Ray know about that.</p> <p>25 Q. If you could turn to what's been marked for identification</p>
<p>CBLFNEW4 Goyal - direct Page 1393</p> <p>1 and it will be great to get some perspective from you." What</p> <p>2 did you understand Mr. Ray to be saying there in the sentence</p> <p>3 that begins with "as you know"?</p> <p>4 A. He wanted to work in investment management, research so he</p> <p>5 wanted to call regarding that I started working in this</p> <p>6 industry how's my experience.</p> <p>7 Q. If you look at his signature line under "best regards," it</p> <p>8 says, "Rob Ray, Dell, Inc. Enterprise PG Finance." Did you</p> <p>9 know what Enterprise PG Finance is?</p> <p>10 A. Yes.</p> <p>11 Q. What is that?</p> <p>12 A. PG here stands for product group, so it's enterprise</p> <p>13 product group. It is the group that develops products for</p> <p>14 enterprise which is large company customers, so the products</p> <p>15 are like servers and also desktops, notebooks, especially for</p> <p>16 those kind of customers.</p> <p>17 Q. So it's your understanding at that time in September of</p> <p>18 2006 that Mr. Ray worked in the enterprise product group area</p> <p>19 at Dell?</p> <p>20 A. Yes.</p> <p>21 Q. Take a look at what's been marked for identification as</p> <p>22 Government Exhibit 701. Do you see that, Mr. Goyal?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Is that another e-mail exchange between you and Rob Ray</p> <p>25 from October 2006?</p>	<p>CBLFNEW4 Goyal - direct Page 1395</p> <p>1 as Government Exhibit 703. Do you see that, Mr. Goyal?</p> <p>2 A. Yes.</p> <p>3 Q. Is that another e-mail exchange between you and Rob Ray?</p> <p>4 A. It is.</p> <p>5 Q. And this one looks like it spans from October, from 2006</p> <p>6 through March of 2007, is that correct?</p> <p>7 A. Right.</p> <p>8 MR. TARLOWE: Government offers Exhibit 703?</p> <p>9 MR. FISHBEIN: No objection.</p> <p>10 THE COURT: Government Exhibit 703 is received.</p> <p>11 MR. TARLOWE: Mr. Hoffman, if you could please enlarge</p> <p>12 the e-mail on top.</p> <p>13 Q. This is an e-mail from Rob Ray to you, is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And focusing on the second paragraph, Rob Ray wrote, "On a</p> <p>16 personal front I found out that I will be going to IR end of</p> <p>17 this month." What did you understand IR to be?</p> <p>18 A. Investor relations.</p> <p>19 Q. He continues. "I am very excited about it and really</p> <p>20 looking forward to the experience. I am sure we will be</p> <p>21 talking more often now. I have also registered for the CFA</p> <p>22 exam since I think it will be invaluable for what I want to do</p> <p>23 long term."</p> <p>24 Let me just stop there for a moment. When he wrote,</p> <p>25 "I have also registered for the CFA exam," do you know what the</p>

<p>CBLFNEW4 Goyal - direct Page 1396</p> <p>1 CFA is?</p> <p>2 A. Yes.</p> <p>3 Q. What is it?</p> <p>4 A. CFA is chartered financial analyst and it consists of three</p> <p>5 exams.</p> <p>6 Q. When he wrote, "I think it will be invaluable for what I</p> <p>7 want to do long term," what did you understand him to want to</p> <p>8 do long term?</p> <p>9 A. Working investment management industry.</p> <p>10 Q. Then he goes on to ask you about the CFA exam and at the</p> <p>11 end of that paragraph writes, "BTW," which you understand that</p> <p>12 to be by the way?</p> <p>13 A. Right.</p> <p>14 Q. "By the way, given my career objectives, do you think I am</p> <p>15 doing the right thing by going for the CFA?" What did you</p> <p>16 understand his career objectives to be?</p> <p>17 A. Working in investment management.</p> <p>18 Q. Then the final paragraph he writes, "Hope all is well by</p> <p>19 your end. Please keep an eye out for me if something pops up."</p> <p>20 What did you understand him to mean by that?</p> <p>21 A. Again, it's like if I happen to know of some opposition or</p> <p>22 somebody looking for an associate then I should let him know.</p> <p>23 Q. In that second paragraph he asks you some questions about</p> <p>24 the CFA exam and asks you for some, he asks your opinion about</p> <p>25 which curriculum you recommended. Do you see that?</p>	<p>CBLFNEW4 Goyal - direct Page 1398</p> <p>1 A. I do.</p> <p>2 Q. Please take a look at what's marked for identification as</p> <p>3 Government Exhibit 705. Do you see that, Mr. Goyal?</p> <p>4 A. Yes.</p> <p>5 Q. Is that another e-mail between you and Rob Ray?</p> <p>6 A. Yes.</p> <p>7 Q. From June of 2007?</p> <p>8 A. Yes.</p> <p>9 MR. TARLOWE: Government offers Government Exhibit</p> <p>10 705.</p> <p>11 MR. FISHBEIN: No objection.</p> <p>12 THE COURT: Government Exhibit 705 received.</p> <p>13 Q. And here Rob Ray wrote to you, "Great chatting with you</p> <p>14 today. I'm really glad that things worked out very well for</p> <p>15 you." Do you know what that's a reference to?</p> <p>16 A. Yes.</p> <p>17 Q. What?</p> <p>18 A. It is Prudential Equity Group shutting down and me finding</p> <p>19 job at Neuberger Berman.</p> <p>20 Q. And Rob Ray continues, wrote, "Thanks again for your advice</p> <p>21 which I always find very helpful. As promised I am attaching</p> <p>22 an updated copy of my resume with my IR experience. Since you</p> <p>23 have successfully made the transition from Dell to investment</p> <p>24 management I would love to hear your feedback on my resume only</p> <p>25 if when you have some time. I am looking for some pointers on</p>
<p>CBLFNEW4 Goyal - direct Page 1397</p> <p>1 A. Yes.</p> <p>2 Q. Did you provide any advice or recommendations to him about</p> <p>3 the CFA exam?</p> <p>4 A. Yes, I did.</p> <p>5 Q. If you could take a look at what's marked for</p> <p>6 identification as Government Exhibit 704. Is that an e-mail</p> <p>7 exchange between you and Rob Ray?</p> <p>8 A. Yes, it is.</p> <p>9 Q. From March of 2007?</p> <p>10 A. Correct.</p> <p>11 MR. TARLOWE: Government offers Government Exhibit</p> <p>12 704.</p> <p>13 MR. FISHBEIN: No objection.</p> <p>14 THE COURT: Government Exhibit 704 is received.</p> <p>15 Q. Focusing on the e-mail on top from Rob Ray to you, do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. Mr. Ray wrote to you, "Hey, Sandy. Thanks for the tips on</p> <p>19 CFA. I will probably go with Schweser also." That's a</p> <p>20 reference to one of the different courses on the CFA exam?</p> <p>21 A. One of the different guide books.</p> <p>22 Q. Then he wrote, "I am very excited about IR since it will</p> <p>23 give me the exposure that I need and hopefully help with my</p> <p>24 long-term interests in research and asset management." Do you</p> <p>25 see that?</p>	<p>CBLFNEW4 Goyal - direct Page 1399</p> <p>1 how I should frame things to better highlight my interest in</p> <p>2 IR." When Rob Ray wrote about his interest in IM, what did you</p> <p>3 understand IM to be?</p> <p>4 A. Investment management.</p> <p>5 Q. He asked you for some pointers. Do you recall providing</p> <p>6 pointers to him?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall sitting here today what they were?</p> <p>9 A. No, I don't remember the particulars.</p> <p>10 Q. Then Rob Ray continued in the e-mail, "Please keep an eye</p> <p>11 out for me both buy and sell side and let me know whenever you</p> <p>12 come across something interesting. My ultimate objective is to</p> <p>13 get to the buy side but I fully realize that sell side may be</p> <p>14 my only ticket to entry." What did you understand him to mean</p> <p>15 by that?</p> <p>16 A. Buy side, which is managing clients' money, normally hires</p> <p>17 people only who have some sort of equity research experience</p> <p>18 and they don't hire directly from companies, so in this</p> <p>19 industry normal career path is people from companies like Dell</p> <p>20 or HP or Intel they first come to work in sell side research</p> <p>21 and that after a while that's when they go to buy side.</p> <p>22 Q. Then he continued in the e-mail at the end of that</p> <p>23 paragraph, "Do you still think it is a good idea to get some</p> <p>24 sell side experience under my belt? If I do it, I am sure I</p> <p>25 should only consider the top firms." Do you see that?</p>

<p>CBLFNEW4 Goyal - direct Page 1400</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall discussing that with Mr. Ray?</p> <p>3 A. I don't have a particular memory of this conversation.</p> <p>4 Q. At the end he wrote, "Anyway, enough about me. I wanted to</p> <p>5 wish you all the best in your new job. I am really happy for</p> <p>6 you. I bet you are excited and so am I. I will talk to you</p> <p>7 soon. Have a great weekend."</p> <p>8 When did you start working at Neuberger Berman?</p> <p>9 A. It was the summer of 2007.</p> <p>10 Q. Where was Rob Ray working at that time?</p> <p>11 A. In Dell.</p> <p>12 Q. Where in Dell was he working at that time?</p> <p>13 A. Investor relations.</p> <p>14 Q. Did you continue to speak to him after you joined Neuberger</p> <p>15 Berman?</p> <p>16 A. Yes.</p> <p>17 Q. If you please take a look at Government Exhibit 708, what's</p> <p>18 marked for identification as Government Exhibit 708. Do you</p> <p>19 see that, Mr. Goyal?</p> <p>20 A. Yes.</p> <p>21 Q. Is that an e-mail exchange between you and Rob Ray from</p> <p>22 September of 2007?</p> <p>23 A. Yes.</p> <p>24 MR. TARLOWE: Offer Government Exhibit 708.</p> <p>25 MR. FISHBEIN: No objection.</p>	<p>CBLFNEW4 Goyal - direct Page 1402</p> <p>1 was in a different industry and wanted someone with Wall Street</p> <p>2 experience in that space."</p> <p>3 Then you continued. "Just keep trying, it's a matter</p> <p>4 of time. You never know when things click." Do you see that?</p> <p>5 A. Right.</p> <p>6 Q. What did you mean by that when you wrote, "Just keep</p> <p>7 trying, it's a matter of time."</p> <p>8 A. It means just keep looking, just keep applying for jobs,</p> <p>9 that's it.</p> <p>10 Q. Then if we could just look finally at the e-mail on top,</p> <p>11 that's an e-mail from Rob Ray to you, is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Looking at the first paragraph, you can just start in the</p> <p>14 middle of that paragraph. "Was looking for some advice</p> <p>15 regarding a new development that happened last week. I had</p> <p>16 written to Andy Neff (Bear) expressing my interest in research.</p> <p>17 He wrote back to me saying he will be interested to chat and</p> <p>18 the impression I got was he is looking for someone now." Do</p> <p>19 you know who Andy Neff is?</p> <p>20 A. Yes.</p> <p>21 Q. Who is he?</p> <p>22 A. He was a senior IT analyst at Bear Stearns at the time.</p> <p>23 Q. Then he continues. "Do you have any scoop about Andy or</p> <p>24 Bear?" Then he goes on to ask you several questions, "How</p> <p>25 about Andy? Is he pretty well respected on the Street? Is he</p>
<p>CBLFNEW4 Goyal - direct Page 1401</p> <p>1 THE COURT: Government Exhibit 708 is received.</p> <p>2 (Government's Exhibit 708 received in evidence)</p> <p>3 MR. TARLOWE: Mr. Hoffman, if I could ask you to start</p> <p>4 with the e-mail that starts at the bottom of the first page and</p> <p>5 spills over to the second page? I guess we have to do one at a</p> <p>6 time. Your Honor, I noticed the time. If I could maybe finish</p> <p>7 this document?</p> <p>8 THE COURT: Yes, that's what I was going to suggest.</p> <p>9 Q. So this is an e-mail, Mr. Goyal, from you to Rob Ray, is</p> <p>10 that correct? This particular one, the one on the bottom of</p> <p>11 the first page?</p> <p>12 A. Yes.</p> <p>13 Q. And it's from September 17, 2007?</p> <p>14 A. Correct.</p> <p>15 Q. And you wrote, start with the second paragraph. "You,"</p> <p>16 meaning Rob Ray, "had sent your resume to a buy side person who</p> <p>17 was sitting next to me during a lunch. Put in a good word for</p> <p>18 you but got the impression that he wasn't looking to hire</p> <p>19 anybody." Are you saying there that you, Mr. Goyal, put in a</p> <p>20 good word for him?</p> <p>21 A. I put in a good word for Rob Ray, that's what I mean.</p> <p>22 Q. With a buy side person?</p> <p>23 A. Yes.</p> <p>24 Q. And then you continued. "Also, there was another analyst</p> <p>25 in our company looking for someone. Talked about you, but he</p>	<p>CBLFNEW4 Goyal - direct Page 1403</p> <p>1 a good guy to work for? What kind of things do you think he</p> <p>2 will ask? Looking forward to some tips from you. By the way,</p> <p>3 thanks so much for putting in a good word for me with Jeff and</p> <p>4 keeping an eye out for me. I really appreciate it."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 MR. TARLOWE: You can take that down.</p> <p>8 THE COURT: All right, why don't we break here, ladies</p> <p>9 and gentlemen. Obviously, tomorrow is Thanksgiving and so we</p> <p>10 won't be back until Monday. Be here ready to go at 9:30. I</p> <p>11 was going to tell you not to eat too much tomorrow, but, you</p> <p>12 know, you can eat a lot tomorrow, that's the whole point of the</p> <p>13 day. Another point of the day is to be thankful for what we</p> <p>14 have in this country and you just have to look around the world</p> <p>15 to see we are very, very fortunate relative to a lot of people</p> <p>16 in a lot of places.</p> <p>17 One of the things that I am grateful for, and I know I</p> <p>18 speak for the lawyers and the parties, is that we have people</p> <p>19 like you who are willing to dedicate themselves to this public</p> <p>20 service that we're on, serving on a jury. That's a pretty long</p> <p>21 stint. I want to say we really appreciate all the time that</p> <p>22 you put into this trial already and all that you will continue</p> <p>23 to put in. It's important work, and we're very appreciative.</p> <p>24 So with that, have a wonderful holiday and we'll see</p> <p>25 you Monday. Thank you, you're excused.</p>

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1	(In open court; jury not present)		1 7081402
2	THE COURT: Okay, have a seat. Anything we should		2 DEFENDANT EXHIBITS
3	discuss before we break? Okay. Mr. Weingarten, you can catch		3 Exhibit No. Received
4	your train.		4 100301345
5	MR. WEINGARTEN: I'm out of here.		5 86631350
6	THE COURT: You should be very well rested, because		6
7	you haven't been doing much.		7
8	MR. WEINGARTEN: That's about to change.		8
9	THE COURT: I'm sure. I'll see you folks Monday		9
10	morning. If anything comes up during the weekend, shoot an		10
11	e-mail to chambers. We'll be checking in. Great, enjoy the		11
12	holiday. Mr. Goyal, we'll start Monday, so be here ready to go		12
13	by nine or 9:15 at the latest. Thank you. So long, have a		13
14	good day.		14
15	(Adjourned to November 26, 2012 at 9:30 a.m.)		15
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In The Matter Of:
UNITED STATES OF AMERICA, v
TODD NEWMAN,

November 26, 2012

SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330

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1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 -----x 4 UNITED STATES OF AMERICA, 5 6 v. 12 Cr. 121 (RJS) 7 8 TODD NEWMAN, 9 ANTHONY CHIASSON, 10 11 Defendants. 12 -----x 13 14 New York, N.Y. 15 November 26, 2012 16 9:35 a.m. 17 18 Before: 19 20 HON. RICHARD J. SULLIVAN, 21 22 District Judge 23 24 APPEARANCES 25 26 PREET BHARARA 27 United States Attorney for the 28 Southern District of New York 29 ANTONIA APPS 30 JOHN ZACH 31 RICHARD TARLOWE 32 Assistant United States Attorneys 33 34 SHEARMAN & STERLING 35 Attorneys for Defendant Newman 36 BY: STEPHEN R. FISHBEIN 37 JOHN A. NATHANSON 38 39 STEPTOE & JOHNSON 40 Attorneys for Defendant Chiasson 41 BY: REID WEINGARTEN 42 ERIK KITCHEN 43 MICHELLE LEVIN 44 -and- 45 MORVILLO LLP 46 BY: GREGORY R. MORVILLO	1 (In open court; jury present) 2 THE COURT: All right. Have a seat. Good morning, 3 ladies and gentlemen. Good to see you again. I've missed you. 4 Hope you all had nice Thanksgiving and got a rest over the 5 weekend. It's hard to rest when it's Thanksgiving and black 6 Friday right after that. Today is cyber Monday, which I'm not 7 exactly sure what that means, it just means you can shop 8 without going to the store. 9 So we are going to resume the direct examination of 10 Mr. Goyal by Mr. Tarlowe. Okay. 11 SANDEEP GOYAL, 12 called as a witness by the Government, 13 having been previously duly sworn, testified as follows: 14 MR. TARLOWE: May I proceed, your Honor? 15 THE COURT: Yes, you may. 16 DIRECT EXAMINATION 17 BY MR. TARLOWE: (Continued) 18 Q. Mr. Goyal, I believe you testified last week that when you 19 were working at Prudential you spoke to some friends of yours 20 at Dell, is that correct? 21 A. Yes, it is. 22 Q. In general, what kind of information did those friends 23 provide to you about Dell? 24 A. It was about general business conditions in Dell groups, in 25 their segments.				
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1 (Trial resumed; jury not present) 2 THE COURT: All right. The government has made a 3 motion to preclude certain expert testimony. I assume this can 4 wait until sometime later? 5 MS. APPS: Yes, your Honor. 6 THE COURT: This week, even. All right, the witness 7 is here? 8 MR. TARLOWE: Yes, sir. 9 THE COURT: Anything we need to discuss before the 10 witness takes the stand? No? The jurors are all here? Okay. 11 We're running a little late because I was interviewing interns 12 this morning. Hope you had a nice Thanksgiving. Anybody go to 13 the parade? No? Okay, Dan, you can bring in the jury. 14 (Continued on next page) 15 16 17 18 19 20 21 22 23 24 25	1 Q. What do you mean by their segments? 2 A. They worked in various segments within Dell. Dell is a big 3 company, it has many different segments for different 4 customers. For example, one is international Europe, Asia, so 5 on. Then one is for U.S., within U.S. there's consumer, small 6 and medium business, large businesses, services and so on. 7 Q. Are you familiar with the term "rollup"? 8 A. Yes, I am. 9 Q. What do you understand that to mean? 10 A. It is when information from all of the different segments 11 is consolidated to get the overall company picture. 12 Q. What information is contained in the company's quarterly 13 earnings results? 14 A. Excuse me? 15 Q. When the company, when a company like Dell announces its 16 quarterly financial results, are those results the consolidated 17 rolled up results? 18 A. Yes. The financial statements are about overall company's 19 consolidated results. 20 Q. Did you receive information about Dell's rolled up or 21 consolidated financial results from anyone at Dell before they 22 were announced to the public? 23 A. Yes, I did. 24 Q. Who did you receive that information from? 25 A. From Rob Ray.				

CBQFNEW1	Goyal - direct	Page 1411	CBQFNEW1	Goyal - direct	Page 1413
1	Q. Mr. Goyal, I'm showing you what's been marked for		1	of e-mails between you and Rob Ray. Do you recall being shown	
2	identification as Government Exhibit 2171. Mr. Goyal, do you		2	those e-mails during your testimony?	
3	recognize the person shown in that photograph?		3	A. Yes.	
4	A. Yes.		4	Q. And what was the general subject matter of those e-mails?	
5	Q. Who is it?		5	A. Rob wanted to work in investment management industry and	
6	A. This is Rob Ray.		6	sought my guidance and tips on how to get in.	
7	MR. TARLOWE: The government offers Government Exhibit		7	Q. Where was he working at the time?	
8	2171.		8	A. He was working at Dell.	
9	MR. FISHBEIN: No objection.		9	Q. If we could take a look at Government Exhibit 708, which is	
10	THE COURT: No objection. Government Exhibit 2171 is		10	in evidence. And this is an e-mail exchange between you and	
11	received.		11	Rob Ray. We looked at parts of this e-mail last week.	
12	(Government's Exhibit 2171 received in evidence)		12	Mr. Hoffman, if you could please turn to page 2. There's a	
13	Q. Mr. Goyal, what was the nature of your relationship with		13	part of this we did not go over last week. If you could please	
14	Rob Ray?		14	enlarge, Mr. Hoffman, the part that says "Hey Sandy" down.	
15	A. During what time?		15	This is from Rob Ray to you, this portion, is that	
16	Q. What kind of relationship did you have with him?		16	correct?	
17	A. It was not very close or personal. He was not like other		17	A. Yes.	
18	personal friends. It was mostly, we talked mostly regarding		18	Q. Rob Ray wrote, "Hey Sandy. I hope you had a nice and	
19	his career objectives, that kind of relationship.		19	relaxing long weekend. Mine was pretty uneventful. Did some	
20	Q. Were you friends with Rob Ray?		20	barbecuing with friends and things like that. Didn't go	
21	A. He was not that close. He wasn't like other personal		21	anywhere this year since I'm preparing for my CFA which is	
22	friends.		22	right around the corner."	
23	Q. Where did you first meet him?		23	I think you might have testified about this last week,	
24	A. At the business school.		24	but what is the CFA?	
25	Q. Have you met Mr. Ray's wife?		25	A. It's chartered financial analyst.	
CBQFNEW1	Goyal - direct	Page 1412	CBQFNEW1	Goyal - direct	Page 1414
1	A. Yes.		1	Q. What is that?	
2	Q. Has Rob Ray met your wife?		2	A. It's a kind of program and review, you have to pass three	
3	A. Yes.		3	exams to get that certification or charter and it's viewed very	
4	Q. If you could please take a look in your binder at what's		4	favorably in investment management industry.	
5	marked for identification as Government Exhibit 741. Is that		5	Q. Rob Ray then continued in his e-mail to you and wrote,	
6	an e-mail between you and Rob Ray from October of 2009?		6	"Hope you are fully settled in New York City and enjoying your	
7	A. Yes.		7	new job." What was the new job he was referring to?	
8	MR. TARLOWE: The government offers Government Exhibit		8	A. Neuberger Berman.	
9	741.		9	Q. Rob Ray wrote, "I am still desperately looking to break	
10	THE COURT: Any objection?		10	into the buy/sell side, but no luck so far. I have put the job	
11	MR. FISHBEIN: No objection.		11	search on hold for now since I am trying to focus on the CFA	
12	THE COURT: Mr. Morvillo?		12	which is in December and then plan to start the search in full	
13	MR. MORVILLO: No objection, your Honor.		13	swing come January. I definitely want to make the transition	
14	THE COURT: Government Exhibit 741 is received.		14	by March of next year since I have decided that's what I want	
15	Q. Mr. Goyal, the bottom e-mail is an e-mail that you sent to		15	to pursue, so the sooner the better."	
16	Rob Ray on October 17, 2009, the subject is happy Diwali.		16	When he said March of next year, was that your	
17	Could you just read what you wrote to Rob Ray?		17	understanding it was March of 2008 that he was referring to?	
18	A. Hi, Rob, I wish you and family a very happy and prosperous		18	A. Yes.	
19	Diwali.		19	Q. And then he continues in this e-mail to you, "Please keep	
20	MR. TARLOWE: Then Rob Ray replied to you? Hey, Sandy		20	me posted if you come across something" -- the next page -- "or	
21	thanks for your kind wishes. My wife and I also wish you and		21	if you need an assistant. But seriously, please keep me in	
22	your family a very happy and prosperous Diwali, best, Rob. Do		22	mind if you hear anything either on the buy or sell side since	
23	you see that?		23	I will make the switch in a heartbeat. I am planning to visit	
24	A. Yes.		24	New York City sometime early next year. I figured sometime	
25	Q. Now, last week when you testified you were shown a number		25	around the bonus season will be the best time for me to break	

<p>CBQFNEW1 Goyal - direct Page 1415</p> <p>1 in."</p> <p>2 What is the bonus season?</p> <p>3 A. It's in January to March. That's where most people in</p> <p>4 finance field get their end-of-year bonuses.</p> <p>5 MR. TARLOWE: You can take that down.</p> <p>6 Q. When was the first time that Rob Ray provided information</p> <p>7 to you about Dell's rolled up or consolidated financial</p> <p>8 results?</p> <p>9 A. It was sometime in late 2007.</p> <p>10 Q. Where were you working at the time?</p> <p>11 A. Neuberger Berman.</p> <p>12 Q. Where was Rob Ray working at the time?</p> <p>13 A. In Dell.</p> <p>14 Q. Where within Dell?</p> <p>15 A. Investor relations.</p> <p>16 Q. Do you recall specifically what Rob Ray said to you on that</p> <p>17 particular occasion?</p> <p>18 A. No.</p> <p>19 Q. What if anything do you recall about what Rob Ray said to</p> <p>20 you at that time?</p> <p>21 A. The thing I recall is I thought that information was good.</p> <p>22 Q. What do you mean by that?</p> <p>23 A. It meant that information was about the coming quarterly</p> <p>24 financial results and it was regarding the numbers there.</p> <p>25 Q. Was it regarding numbers for a particular segment or for</p>	<p>CBQFNEW1 Goyal - direct Page 1417</p> <p>1 A. There are two margins. One is gross margin and other</p> <p>2 operating margin.</p> <p>3 Q. And for what business segment or segments of Dell did he</p> <p>4 provide that information?</p> <p>5 A. It was for overall consolidated company.</p> <p>6 Q. How did Rob Ray communicate that information to you?</p> <p>7 A. Mostly over the phone.</p> <p>8 Q. How did he describe the revenues and margins to you?</p> <p>9 A. They were either in, mostly they were in a range of numbers</p> <p>10 or relative to analyst expectations.</p> <p>11 Q. So first you said a range. What do you mean by that?</p> <p>12 A. For example, revenue could be between \$14 billion to \$14.3</p> <p>13 billion, low 14's.</p> <p>14 Q. What about margins?</p> <p>15 A. Margins could be between 18 percent to 18.3 percent or low</p> <p>16 18's.</p> <p>17 Q. Those are just examples?</p> <p>18 A. These are just examples, yes.</p> <p>19 Q. You said sometimes he provided information relative to</p> <p>20 Street expectations, is that what you said?</p> <p>21 A. Yes.</p> <p>22 Q. What do you mean by that?</p> <p>23 A. There are like various sell side analysts on Wall Street</p> <p>24 and consensus is average of all, or expectations are average</p> <p>25 estimate of all those Wall Street analysts covering that</p>
<p>CBQFNEW1 Goyal - direct Page 1416</p> <p>1 the overall consolidated financial results?</p> <p>2 A. The numbers were for overall consolidated results.</p> <p>3 Q. Prior to that had you gotten that type of information from</p> <p>4 your other friends at Dell?</p> <p>5 A. No, I don't recall getting that kind of information before.</p> <p>6 Q. What was different about the information from Rob Ray?</p> <p>7 A. Rob Ray's information was regarding overall consolidated</p> <p>8 numbers and regarding quarterly financial results that were</p> <p>9 about to be reported.</p> <p>10 Q. Was that the only time that Rob Ray reported information to</p> <p>11 you about Dell's rolled up or consolidated financial results?</p> <p>12 A. No.</p> <p>13 Q. Did Rob Ray do that in connection with one quarter or more</p> <p>14 than one quarter?</p> <p>15 A. More than one quarter.</p> <p>16 Q. In connection with how many quarters did Rob Ray provide</p> <p>17 information to you about Dell's consolidated financial results?</p> <p>18 A. It was for about two years, so about eight quarters, I</p> <p>19 guess.</p> <p>20 Q. During what period of time?</p> <p>21 A. From about late 2007 to about late 2009.</p> <p>22 Q. Which line or lines of Dell's financial results did Rob Ray</p> <p>23 give you information about?</p> <p>24 A. It was mostly revenues and margins.</p> <p>25 Q. What do you mean when you say margins?</p>	<p>CBQFNEW1 Goyal - direct Page 1418</p> <p>1 company.</p> <p>2 Q. Based on your conversations with Rob Ray, did he appear to</p> <p>3 be familiar with the consensus estimates for Dell?</p> <p>4 A. Yes.</p> <p>5 Q. How did he describe -- let me rephrase that. You said one</p> <p>6 of the ways he described the information to you was relative to</p> <p>7 Street expectations. How would he do that?</p> <p>8 A. For example, revenue or margins could be very close to</p> <p>9 consensus or Street expectations or slightly below or higher</p> <p>10 the estimates or much lower or much higher than the estimates,</p> <p>11 expectations.</p> <p>12 Q. You said that sometimes he provided ranges. For gross</p> <p>13 margin, for example, how small or large of a range did Rob Ray</p> <p>14 provide?</p> <p>15 A. I think the small range was like, for example, it was 17 to</p> <p>16 17.2 percent and it could be as large as like 17-6 to 17.4,</p> <p>17 17.5 percent.</p> <p>18 Q. Sitting here today, do you recall any particular revenue</p> <p>19 numbers that he provided, the actual numbers?</p> <p>20 A. No.</p> <p>21 Q. What about gross margin?</p> <p>22 A. Yes.</p> <p>23 Q. What do you remember about gross margin?</p> <p>24 A. There was one quarter When Street was expecting like high</p> <p>25 17's to low 18's percent gross margin and he mentioned that it</p>

CBQFNEW1	Goyal - direct	Page 1419	CBQFNEW1	Goyal - direct	Page 1421
1	will be low 17 percent.		1	between the end of the quarter and the announcement of the	
2	Q. For which quarters did Rob Ray provide information to you		2	results to the public?	
3	about Dell's consolidated revenues?		3	A. Segments start sending out information to corporate	
4	A. I think it was for almost all the quarters he was providing		4	headquarters. Then they add up all the information and then	
5	information.		5	they put the information into the format or standard in line	
6	Q. For which quarters did he provide information to you about		6	with generally accepted financial and accounting standards so	
7	Dell's margins?		7	that they can make a report.	
8	A. Again, for almost all the quarters.		8	Q. Were there any particular times in Dell's earnings cycle	
9	Q. What if any information did Rob Ray provide to you about		9	when you asked Rob Ray for information about Dell's financial	
10	Dell's earnings per share?		10	results?	
11	A. Sometimes he provided something about EPS and a lot of		11	A. Yes.	
12	times he didn't.		12	Q. When?	
13	Q. A lot of times he --		13	A. It was generally from halfway of the quarter to about	
14	A. Did not.		14	two-thirds of the quarter finish, and then towards the end of	
15	Q. And in those quarters in which he did not provide		15	the quarter and then about the end of quarter to the earnings	
16	information about earnings per share, did you attempt to		16	statement or earnings release.	
17	determine the earnings per share?		17	Q. What time of day did your calls with Rob Ray typically take	
18	A. Yes.		18	place?	
19	Q. How?		19	A. Typically they were in the night.	
20	A. I'll plug in the revenue and margin information he was		20	Q. Where did you make those calls from?	
21	giving in my model and calculate the EPS.		21	A. Mostly my home.	
22	Q. How long does it take to do that calculation?		22	Q. What number did you call Rob Ray at?	
23	A. It's pretty fast. A minute, few minutes.		23	A. Usually his cell number.	
24	Q. When you received information from Rob Ray, did you have to		24	Q. What if anything did you do as Rob Ray provided the	
25	use a model to calculate revenue?		25	information to you?	
CBQFNEW1	Goyal - direct	Page 1420	CBQFNEW1	Goyal - direct	Page 1422
1	A. No.		1	A. I noted it down.	
2	Q. Why not?		2	Q. Where?	
3	A. The purpose of the model is to arrive at numbers like		3	A. On a piece of paper.	
4	revenue margin and I was already getting that information from		4	Q. What if anything did you do with that information?	
5	him.		5	A. I gave it to Jesse.	
6	Q. When you received information from Rob Ray did you have to		6	Q. Mr. Tortora?	
7	use a model to calculate margins?		7	A. Yes.	
8	A. No.		8	Q. How did you give it to Mr. Tortora?	
9	Q. Why not?		9	A. Mostly over the phone.	
10	A. Again, the same reason.		10	Q. When did you give the information to Mr. Tortora relative	
11	Q. Did you have an understanding as to whether or not the		11	to when you received it from Rob Ray?	
12	information Rob Ray provided to you was confidential?		12	A. Usually it was either immediately afterwards or sometimes a	
13	A. Yes.		13	day or two days later.	
14	Q. What was your understanding?		14	Q. What if anything did you do with the piece of paper where	
15	A. It was confidential.		15	you had written down the information?	
16	Q. Did you have an understanding as to whether or not Rob Ray		16	A. Threw it away.	
17	was authorized to provide that information to you?		17	Q. What did you say to Mr. Tortora about where you got the	
18	A. He wasn't.		18	information from?	
19	Q. Did you have an understanding as to whether the information		19	A. I told him I got it from a friend at Dell.	
20	he provided was public or non-public?		20	Q. Did you use Rob Ray's name?	
21	A. It was non-public.		21	A. No.	
22	Q. Approximately how long after Dell's quarters ended did Dell		22	Q. Did you tell Mr. Tortora that the person worked in investor	
23	announce its results to the public?		23	relations?	
24	A. It was around three or four weeks later.		24	A. No.	
25	Q. What's your understanding of what happened during that time		25	Q. What if anything did you tell Mr. Tortora about what his	

CBQFNEW1	Goyal - direct	Page 1423	CBQFNEW1	Goyal - direct	Page 1425
1	job was at Dell?		1	A. No.	
2	A. That he works in some corporate department and has access		2	Q. Who raised the idea of you getting paid by Diamondback?	
3	to this information.		3	A. Jesse did.	
4	Q. When you say "this information," what do you mean?		4	Q. When was that?	
5	A. Consolidated financial results.		5	A. Sometime late 2007, maybe October-November.	
6	Q. During your conversations with Rob Ray about Dell's		6	Q. What did Mr. Tortora say to you at that time?	
7	financial results, what else, if anything, did you discuss with		7	A. He said if you continue providing me information regarding	
8	him?		8	Dell we can get you paid for that.	
9	A. Mostly his career.		9	Q. At that time had you received information from Rob Ray?	
10	Q. What if anything did he say to you about his career goals		10	A. I don't think so.	
11	during that time?		11	Q. What did you say to Mr. Tortora?	
12	A. He wanted to work in investment management.		12	A. I told him I'll have to look at that because my work visa	
13	Q. What if any steps did you take to help Rob Ray with his		13	status didn't allow me to have two jobs or get paid for another	
14	career goals?		14	job.	
15	A. I helped, I reviewed his resume, gave him tips about how to		15	Q. Did you get back to Mr. Tortora about that?	
16	improve that; gave him feedback about how to interview, what		16	A. Yes.	
17	kind of questions are typical to get asked at interviews, how		17	Q. What did you tell him?	
18	to prepare for that. Then if he was interviewing for somebody,		18	A. I told him this, that I won't be able to do that.	
19	with somebody, I gave him some information he asked regarding		19	Q. What is your wife's name?	
20	the background of that person, his working style or that		20	A. Ruchi.	
21	company. Then I also forwarded his resume to a recruiter.		21	Q. Same last name?	
22	Q. Did you ever discuss with Rob Ray potential employment at		22	A. Yes.	
23	Neuberger Berman?		23	Q. Has your wife ever worked in the financial industry?	
24	A. Yes.		24	A. No.	
25	Q. What if anything did you say to him about that?		25	Q. Does your wife have any experience researching public	
CBQFNEW1	Goyal - direct	Page 1424	CBQFNEW1	Goyal - direct	Page 1426
1	A. I told him that if there is a job opening there, I'll keep		1	companies?	
2	an eye out for that.		2	A. No.	
3	Q. What if anything did you tell Rob Ray about what you did at		3	Q. Did your wife provide any services to Diamondback?	
4	Neuberger Berman?		4	A. No.	
5	A. I told him I work in central research department where we		5	Q. What if anything did you tell Mr. Tortora -- well, what did	
6	write research reports and send stock recommendations to		6	Mr. Tortora say to you after you told him that you could not	
7	Neuberger Berman's portfolio managers.		7	receive payment from Diamondback?	
8	Q. Why did you provide the information you got from Rob Ray to		8	A. He said can my wife be able to accept the payment.	
9	Jesse Tortora?		9	Q. What did you tell him?	
10	A. Because I was paid for that.		10	A. I told him I'll have to look into that.	
11	Q. Who paid you?		11	Q. Did you look into that?	
12	A. Diamondback.		12	A. Yes.	
13	Q. How much were you paid by Diamondback?		13	Q. And did you get back to Mr. Tortora?	
14	A. \$75,000 in the first year and hundred thousand dollars in		14	A. Yes.	
15	the second year.		15	Q. What did you tell him?	
16	Q. What years were those?		16	A. I told him that yes, she is allowed to get payments.	
17	A. I think 2008 and 2009.		17	Q. What do you mean she was allowed to get payment?	
18	Q. In those same years how much did you get paid by Neuberger		18	A. Her visa status, it allowed her to get payments.	
19	Berman?		19	Q. After you told Mr. Tortora that your wife could receive the	
20	A. About \$170,000 per year.		20	payments, what happened next?	
21	Q. Did Neuberger Berman permit you to receive money from a		21	A. He told me that he'll send a sample invoice and I should	
22	hedge fund while you were working at Neuberger Berman?		22	create an invoice based upon that, and then every quarter send	
23	A. No.		23	it out to Diamondback and then I'll be sent, I'll receive, get	
24	Q. Did you tell Neuberger Berman, did you tell anyone at		24	paid.	
25	Neuberger Berman about your arrangement with Diamondback?		25	Q. Would you take a look at Government Exhibit 775-A, which is	

CBQFNEW1	Goyal - direct	Page 1427	CBQFNEW1	Goyal - direct	Page 1429
1	in evidence? Do you see that, Mr. Goyal?		1	A. I had my wife deposit it at the bank.	
2	A. Yes, I do.		2	Q. Who endorsed the check?	
3	Q. What is that?		3	A. She did.	
4	A. This is the invoice that I created.		4	Q. Where did she deposit it? Into what account?	
5	Q. What is the amount?		5	A. Into our joint checking account.	
6	A. \$18,750.		6	Q. If you could take a look, Mr. Goyal, at Government Exhibit,	
7	Q. How did you arrive at that amount?		7	what's marked for identification as Government Exhibit 751, 752	
8	A. It was \$75,000 divided by four for each quarter.		8	and 753?	
9	Q. What's the period covered by this invoice?		9	A. Yes.	
10	A. October 9, 2007 to December 31, 2007.		10	Q. What are those?	
11	Q. The date of the invoice?		11	A. These are the checks related to the invoices per quarter	
12	A. January 2, 2008.		12	relating to the year.	
13	Q. Whose name is on the top of the invoice and the signature		13	MR. TARLOWE: The government offers Government	
14	line?		14	Exhibits 751, 752 and 753.	
15	A. My wife's name.		15	MR. FISHBEIN: No objection.	
16	Q. Whose address is that?		16	MR. MORVILLO: No objection.	
17	A. That was our address.		17	THE COURT: All right, Government Exhibits 751 through	
18	Q. Your home address?		18	753 are received.	
19	A. Yes.		19	(Government's Exhibits 751 through 753 received in	
20	Q. And what about the telephone number?		20	evidence)	
21	A. Home telephone number.		21	Q. This is Government Exhibit 751. What's the amount of this	
22	Q. Whose signature is that?		22	check, Mr. Goyal?	
23	A. My wife's signature.		23	A. 18,750.	
24	Q. What if anything did you do with this invoice?		24	Q. And the date?	
25	A. I had my wife sign this invoice and then I got it sent to		25	A. It is May 14, 2008.	
CBQFNEW1	Goyal - direct	Page 1428	CBQFNEW1	Goyal - direct	Page 1430
1	Diamondback.		1	Q. What did you do with this check after receiving it?	
2	Q. Did you receive payment in connection with that invoice?		2	A. Again, same thing. I had my wife deposit it at the bank.	
3	A. Yes, I did.		3	Q. Who endorsed it?	
4	Q. How much?		4	A. She did.	
5	A. \$18,750.		5	MR. TARLOWE: Government Exhibit 752.	
6	Q. Take a look at what's been marked for identification as		6	Q. The dollar amount is also \$18,750?	
7	Government Exhibit 750. Do you recognize that, Mr. Goyal?		7	A. Yes.	
8	A. Yes.		8	Q. What did you do with this check?	
9	Q. What is it?		9	A. Same thing.	
10	A. It's the check that we got in relation to the invoice.		10	MR. TARLOWE: Government Exhibit 753.	
11	MR. TARLOWE: The government offers Government Exhibit		11	Q. What did you do with this check?	
12	750.		12	A. Same thing.	
13	MR. FISHBEIN: No objection.		13	Q. Do you recall any issues coming up with respect to this	
14	MR. MORVILLO: No objection.		14	arrangement with Diamondback?	
15	THE COURT: Government Exhibits 750 is received.		15	A. Yes.	
16	(Government's Exhibit 750 received in evidence)		16	Q. What do you remember happening?	
17	Q. What's the amount of this check, Mr. Goyal?		17	A. I was contacted by someone who said they were soft dollar	
18	A. \$18,750.		18	provider for Diamondback and that I needed to submit sample	
19	Q. Now, the check is from, the payer is Hoenig, a division of		19	research report in order for them to process the invoice.	
20	ITG. Do you know what that is?		20	Q. What if any sample research did you provide after getting	
21	A. No.		21	that request?	
22	Q. Did you have an understanding of what the relationship was,		22	A. None.	
23	if any, between Hoenig and Diamondback?		23	Q. Did you continue to receive payments from Diamondback after	
24	A. No.		24	that happened?	
25	Q. What if anything did you do after receiving this check?		25	A. Yes.	

CBQFNEW1	Goyal - direct	Page 1431	CBQFNEW1	Goyal - direct	Page 1433
1	Q. Now, the checks you just looked at were all from 2008, is		1	Q. What is that, Mr. Goyal?	
2	that correct?		2	A. This is an invoice for \$100,000.	
3	A. Yes.		3	Q. What's the date of the invoice?	
4	Q. If you want to take a look at 751, 752 and 753.		4	A. January 8, 2009.	
5	A. I think the first one was January 2. Yes, I think so.		5	Q. And the period that the invoice purports to cover?	
6	Yes.		6	A. October 2007 to September 2008.	
7	Q. Did you have any discussions with Mr. Tortora about		7	Q. Who signed that invoice?	
8	payments for the following year, 2009?		8	A. My wife did.	
9	A. Yes.		9	Q. What if anything did you do with that invoice?	
10	Q. One discussion or more than one discussion?		10	A. Same thing. I had her deposit it at the bank.	
11	A. I think it was spread over a few discussions.		11	Q. Who selected the amount of \$100,000?	
12	Q. What if any discussions did you have with Mr. Tortora about		12	A. That's what Jesse had mentioned.	
13	the structure of the payments for 2009?		13	Q. If you could look at what's marked for identification as	
14	A. That it will be a lump sum payment and shown as bonus for		14	Government Exhibit 754? Do you recognize that, Mr. Goyal?	
15	work done in 2008.		15	A. Yes.	
16	Q. How did that come about?		16	Q. What is that?	
17	A. Because I told him because of the visa issues my wife		17	A. It's the check in the amount of \$100,000.	
18	wouldn't be able to accept payment, she wouldn't be able to		18	MR. TARLOWE: Government offers Government Exhibit	
19	work two jobs.		19	754?	
20	Q. What did you mean by that?		20	MR. FISHBEIN: No objection.	
21	A. Like what?		21	THE COURT: All right, Government Exhibit 754 is	
22	Q. What did you mean when you told him that your wife wouldn't		22	received.	
23	be able to work two jobs?		23	(Government's Exhibit 754 received in evidence)	
24	A. It's the same visa thing that I had encountered earlier.		24	Q. Mr. Goyal, what is this?	
25	She had a job and because her visa status had changed she can't		25	A. This is the check.	
CBQFNEW1	Goyal - direct	Page 1432	CBQFNEW1	Goyal - direct	Page 1434
1	accept, she could work only one job on that visa status.		1	Q. Which check?	
2	Q. So it's your understanding she could not receive payment		2	A. This is the check of \$100,000 in relation to that invoice.	
3	from two different entities?		3	Q. What's the date on it?	
4	A. Right.		4	A. January 16, 2009.	
5	Q. Was she working at the time?		5	Q. What did you do after receiving this check?	
6	A. Yes.		6	A. I had my wife deposit at the bank.	
7	Q. What did Mr. Tortora say to you after you informed him of		7	Q. When is the last time you spoke to Mr. Tortora?	
8	that?		8	A. I think it was sometime in 2011. I'm not sure, I think.	
9	A. Then he came back what if we structure it as a bonus		9	Q. You testified last week about the FBI coming to talk to you	
10	payment for work already done in 2008.		10	at some point in 2011. Was the last time you spoke to Mr.	
11	Q. What did you say?		11	Tortora before that or after that?	
12	A. I said that will work.		12	A. Before that.	
13	Q. What if anything did Mr. Tortora say to you about the size		13	Q. Did you include the \$175,000 you received from Diamondback	
14	of that bonus payment?		14	in your income tax returns?	
15	A. He said it will be in the amount of \$100,000.		15	A. Yes, I did.	
16	Q. What else, if anything, did he say to you in connection		16	Q. Did you also include any deductions in your tax returns	
17	with the size of the bonus payment?		17	that were not accurate?	
18	A. He mentioned that Todd is happy with your work.		18	A. Yes.	
19	Q. Who did you understand him to be referring to?		19	Q. In what years did you do that?	
20	A. Todd Newman.		20	A. 2007, eight and nine.	
21	Q. Mr. Goyal, if you could please look at Government Exhibit,		21	Q. What deductions were those?	
22	well, actually, I don't think you have it in your binder.		22	A. They were expenses that were not true.	
23	MR. TARLOWE: Mr. Hoffman, if you could put out. It's		23	Q. Have you corrected those?	
24	already in evidence. Government Exhibit 2270, page 5. If you		24	A. Yes, I have.	
25	could enlarge that, please.		25	Q. Have you made any payment in connection with those	

CBQFNEW1	Goyal - direct	Page 1435	CBQFNEW1	Goyal - direct	Page 1437
1	corrections?		1	Q. I'm showing you what's been marked for identification as	
2	A. Yes, I have made full payments and interest payments.		2	Government Exhibit 2607B. This is an excerpt from Government	
3	Q. Have any promises been made to you about whether or not you		3	Exhibit 2607 which is already in evidence, which are phone	
4	will be prosecuted for any tax crimes in connection with that?		4	records for Sandy Goyal.	
5	A. I have been told that the information I provide won't be		5	MR. TARLOWE: Government offers Government Exhibit	
6	used against me, but there are no promises about any other		6	2607B.	
7	entity prosecuting me.		7	THE COURT: Any objection?	
8	Q. Mr. Goyal, I'm going to just put up for your reference		8	MR. FISHBEIN: No objection. It's an excerpt of	
9	Government Exhibit 90, which contains information about Dell's		9	something already in evidence.	
10	quarters and the dates of various earnings announcements by		10	THE COURT: That's what he said. All right,	
11	Dell. If you could take a look at what's marked for		11	Government Exhibit 2607B is received.	
12	identification as Government Exhibit 710. Is that on e-mail		12	(Government's Exhibit 2607B received in evidence)	
13	between you and Rob Ray from February of 2008?		13	MR. TARLOWE: Pursuant to the stipulation these are	
14	A. Yes.		14	phone records for the phone subscribed to Sandy Goyal and the	
15	MR. TARLOWE: The government offers Government Exhibit		15	records are in Greenwich mean time. So the first row that's	
16	710.		16	highlighted which says February 19, 2008 1:56 is actually a	
17	MR. FISHBEIN: No objection.		17	call on February 18, 2008 at 9:56 p.m.	
18	MR. WEINGARTEN: No objection.		18	Q. Now, the from number Mr. Goyal is 415-738-2210. Do you	
19	THE COURT: Government Exhibit 710 is received.		19	recognize that number?	
20	(Government's Exhibit 710 received in evidence)		20	A. Yes.	
21	Q. Starting with the e-mail on the bottom, is that an e-mail		21	Q. Whose number is that?	
22	from Rob Ray to you?		22	A. My home phone number.	
23	A. Yes.		23	Q. And the number called is 813-380-4010. Pursuant to the	
24	Q. Rob Ray wrote, "Hope you had a wonderful weekend. Finally		24	stipulation, that is the phone number subscribed to Rob Ray.	
25	got around to updating my resume over the weekend. I am		25	How long was that call?	
CBQFNEW1	Goyal - direct	Page 1436	CBQFNEW1	Goyal - direct	Page 1438
1	sending it to you so that you can forward it to the appropriate		1	A. 16 minutes.	
2	people if and when an opportunity opens up. You and I have		2	Q. 15 minutes 53 seconds?	
3	already talked about what I am interested in, so you have a		3	A. Correct.	
4	fair idea what I am looking for. Hopefully, I will land		4	Q. And then there's another call which again, because the	
5	something interesting soon."		5	records are in Greenwich mean time, the call is actually	
6	When Mr. Ray said to you, "I am sending it to you so		6	10:14 p.m. on February 18, 2008. Do you see that call?	
7	that you can forward it to the appropriate people if and when		7	A. Yes.	
8	an opportunity opens up," what did you understand him to be		8	Q. That's also a call from your home number to a number	
9	referring to as the appropriate people?		9	subscribed to Rob Ray. How long was that call?	
10	A. Like, if I happen to know any person or analyst, analyst		10	A. About one hour.	
11	inside or outside Neuberger Berman who was looking for an		11	Q. And those were on the evening of February 18, 2008?	
12	associate, then I can send his resume to that person.		12	A. Correct.	
13	Q. When he said, "You have a fair idea what I am looking for,"		13	Q. Mr. Goyal, if you could please look at what's marked for	
14	at that time in February 2008 what did you understand him to be		14	identification as Government Exhibit 711. Is that an e-mail	
15	looking for?		15	that you sent on February 19, 2008?	
16	A. Something in investment management.		16	A. Yes.	
17	Q. Then you wrote back: "Hi, Rob. Resume looks good. I have		17	MR. TARLOWE: The government offers Government Exhibit	
18	some minor suggestions. Will call in a day or two to discuss."		18	711.	
19	Do you see that?		19	MR. FISHBEIN: No objection.	
20	A. Yes.		20	THE COURT: All right, Government Exhibit 711 is	
21	Q. And what is the date of that e-mail?		21	received.	
22	A. February 12, 2008.		22	(Government's Exhibit 711 received in evidence)	
23	Q. Where is that in terms of Dell's earnings cycle?		23	Q. Mr. Goyal this is an e-mail you sent the next day on	
24	A. It is after the quarter has closed and before the earnings		24	February 19, 2008, 12:48 p.m. to several people; Daniel	
25	have been announced.		25	Fletcher, Brenden Smith and Fayad Abbasi. You've already	

CBQFNEW1	Goyal - direct	Page 1439	CBQFNEW1	Goyal - direct	Page 1441
1	testified about Mr. Abbasi. He was your boss at Neuberger		1	Q. If you can take a look at what's marked for identification	
2	Berman?		2	as Government Exhibit 713. Do you see that, Mr. Goyal?	
3	A. Right.		3	A. Yes, I do.	
4	Q. Who were Dan Fletcher and Brenden Smith?		4	Q. Is that an e-mail that you sent on February 25, 2008?	
5	A. Dan Fletcher was a portfolio manager in Neuberger Berman		5	A. Yes.	
6	and Brenden Smith was an analyst working with another portfolio		6	Q. Government offers Government Exhibit 713.	
7	manager in Neuberger Berman.		7	MR. FISHBEIN: No objection.	
8	Q. And what is the subject line of this e-mail?		8	THE COURT: All right, Government Exhibit 713 is	
9	A. Dell JanQ data points.		9	received.	
10	Q. What did you mean by JanQ?		10	(Government's Exhibit 713 received in evidence)	
11	A. January quarter.		11	Q. Mr. Goyal, the bottom of this, is that just you forwarding	
12	Q. That's the quarter that ended when?		12	the e-mail that we just looked at?	
13	A. This is the quarter that usually ends on January 31.		13	A. Right.	
14	Q. And in this particular year when did that quarter end?		14	Q. And then the top is an e-mail you sent to Fayad Abbasi,	
15	A. February 1, 2008.		15	Brenden Smith and Daniel Fletcher who are the same recipients,	
16	Q. When is this e-mail relative to when those quarterly		16	those three are the same recipients of the e-mail at the	
17	results were announced?		17	bottom?	
18	A. This is nine days before the quarterly results were		18	A. Right.	
19	announced.		19	(Continued next page)	
20	Q. You wrote, "Hi. I recently got some data points from my		20		
21	Dell contacts regarding the JanQ."		21		
22	Where did you get the information that's contained in		22		
23	this e-mail?		23		
24	A. From Rob Ray.		24		
25	Q. The first bullet point, "Revenue is expected to be close to		25		
CBQFNEW1	Goyal - direct	Page 1440	CBQMNEW2	Goyal - direct	Page 1442
1	analyst expectations," is that about Dell's consolidated rolled		1	Q. And then you added another recipient, Daniel Niles.	
2	up revenue or some business segment?		2	Who is Daniel Niles?	
3	A. Consolidated revenue.		3	A. He was the portfolio manager at Neuberger Berman.	
4	Q. And when you wrote in the third bullet point, "Gross		4	Q. You wrote in this e-mail, the subject line: Additional	
5	margins in high 18's and op ex in high 13's as percentage of		5	Dell JAN Q data points.	
6	revenue," do you see that?		6	When is this e-mail relative or where within Dell's	
7	A. Yes.		7	earning cycle was this e-mail sent?	
8	Q. What were you referring to there?		8	A. It is three days before their earnings announcement.	
9	A. Referring to --		9	Q. You wrote: Some more insights. First bullet point: One	
10	Q. What gross margins were you talking about?		10	time charges to affect opex by around 100 BPS.	
11	A. Gross margins about overall company.		11	The squiggly line, does that mean around?	
12	Q. At the time that Rob Ray provided that information to you,		12	A. Right.	
13	did you understand that information -- did you have an		13	Q. And 100 BPS, what does that mean?	
14	understanding as to whether or not that information was		14	A. It means 100 basis points, which is 1 percent.	
15	confidential?		15	Q. What is opex?	
16	MR. FISHBEIN: Objection. Asked and answered.		16	A. Operating expenses.	
17	THE COURT: Overruled. You can answer.		17	Q. The second bullet point you wrote: Operating margin close	
18	A. Yes, it was.		18	to 5 percent, including charges, and 6 percent excluding them.	
19	Q. Did you have an understanding as to whether or not he was		19	What did you mean by including charges and excluding	
20	authorized to provide you the information that's described in		20	them?	
21	this e-mail?		21	A. There are certain one-time charges and some people include	
22	A. He was not.		22	them in their earning statements. Some people like to exclude	
23	Q. Did you do any calculations to arrive at the conclusion		23	them while analyzing the statements. So this means 5 percent	
24	that gross margins is in high 18's and OPEX in high 13's?		24	including those one-time charges and then 6 percent excluding	
25	A. No.		25	those one-time charges.	

CBQMNEW2	Goyal - direct	Page 1443	CBQMNEW2	Goyal - direct	Page 1445
1	Q. The third bullet point has information about EPS. Is that		1	discuss his career with you?	
2	earnings per share?		2	A. Yes, he did.	
3	A. Right.		3	Q. What, if anything, did he say about what his career goals	
4	Q. And information about revenue.		4	were at that time?	
5	The information contained in this e-mail, where did		5	A. Working in investment management.	
6	you get that information from?		6	Q. If you could take a look at what's marked for	
7	A. Rob Ray.		7	identification as Government Exhibit 715, is that an e-mail	
8	Q. Did you do any calculations to arrive at the numbers		8	exchange between you and Rob Ray from April of 2008?	
9	contained in this e-mail?		9	A. Yes.	
10	A. No.		10	MR. TARLOWE: The government offers Government Exhibit	
11	Q. When Rob Ray provided this information to you, did you have		11	715.	
12	an understanding as to whether or not this information was		12	MR. FISHBEIN: No objection.	
13	confidential?		13	THE COURT: Government Exhibit 715 is received.	
14	A. It was.		14	(Government's Exhibit 715 received in evidence)	
15	Q. Did you have an understanding as to whether or not he was		15	Q. Starting, Mr. Goyal, with the e-mail at the bottom, April	
16	authorized to provide this information to you?		16	14, 2008, that's from Rob Ray to you, is that correct?	
17	A. He was not.		17	A. Yes.	
18	Q. Again, February 25, 2008 is how many days before the		18	Q. And he wrote: Hey, Sandy: I have a preliminary call with	
19	earnings announcement?		19	Ben tomorrow afternoon. Real high level. What should I expect	
20	A. Three days before.		20	from the call? Thanks, Rob.	
21	Q. The earnings announcement was on February 28, 2008, is that		21	Who did you understand him to be referring to when he	
22	correct?		22	said Ben?	
23	A. True.		23	A. Ben Reitzes. He was a senior sell side analyst.	
24	Q. What time of day did Dell typically announce its earnings?		24	Q. What firm?	
25	A. Normally, around 4:30 p.m.		25	A. I am not sure. I think he was initially at UBS, then he	
CBQMNEW2	Goyal - direct	Page 1444	CBQMNEW2	Goyal - direct	Page 1446
1	Q. When does the market close?		1	went to Lehman Brothers and then Barclays.	
2	A. 4 p.m.		2	Q. He was a sell side research analyst?	
3	Q. Did Dell announce its earnings after the market closed?		3	A. Yes.	
4	A. Yes.		4	Q. Then you replied to Rob Ray saying: Just be prepared with	
5	Q. If you could please look at what's marked for		5	your industry views and some stocks, storage space, too.	
6	identification -- sorry. It's already in evidence. Government		6	Otherwise, same old things, like why you want to join, et	
7	Exhibit 157.		7	cetera, your expectations, long-term goals.	
8	This is an e-mail on February 28, 2008 at 4:51 p.m.		8	If you could take a look at what's marked for	
9	When is that relative to Dell's earnings announcement?		9	identification as Government Exhibit 719.	
10	A. It is a little bit after the earnings announcement.		10	You see that, Mr. Goyal?	
11	Q. When you say a little bit?		11	A. Yes.	
12	A. Less than half an hour.		12	Q. That's an e-mail from Rob Ray to you from May 5, 2008?	
13	Q. The subject line is Dell and Mr. Tortora wrote to you:		13	A. Correct.	
14	Excellent call. We were short some Dell into call and short		14	MR. TARLOWE: The government offers Government Exhibit	
15	INTC, et cetera.		15	719.	
16	When Mr. Tortora said, we were short some Dell into		16	MR. FISHBEIN: No objection.	
17	call, what did you understand that to mean?		17	THE COURT: Government Exhibit 719 is received.	
18	A. Short means they have bought positions that will go up if		18	(Government's Exhibit 719 received in evidence)	
19	the stock goes down.		19	Q. This is an e-mail Rob Ray sent to you and you wrote: Hey,	
20	Q. What did you understand it to mean, into call?		20	Sandy, as promised, attached is my résumé. Please feel free to	
21	A. Into call means before the call.		21	make my minor tweaks in wording if you deem necessary. Also, I	
22	Q. What call?		22	think it's best not to mention to the recruiter that Ben and I	
23	A. Earnings call.		23	already spoke. She might wonder then why you are sending my	
24	Q. Now, during the time that Rob Ray was providing information		24	résumé again. Thanks again for your help. Thanks, Rob.	
25	to you about Dell's financial results, did he continue to		25	What did you understand Rob Ray to be saying to you	

CBQMNEW2	Goyal - direct	Page 1447	CBQMNEW2	Goyal - direct	Page 1449
1	here when he said, I think it's best not to mention to the		1	identification as Government Exhibit 720-A.	
2	recruiter that Ben and I already spoke?		2	Do you see that, Mr. Goyal?	
3	A. I think there was another job within Lehman Brothers at		3	A. Yes.	
4	that time. There was another job which was not with Ben. So		4	MR. TARLOWE: The government offers Government Exhibit	
5	that's why he didn't want to mention that he had already spoken		5	720A.	
6	to Ben, because he was thinking of applying for that other job,		6	MR. FISHBEIN: No objection.	
7	also.		7	THE COURT: Hearing no objection, I'll receive it,	
8	Q. And attached to that was Rob Ray's résumé on the second		8	Government Exhibit 720A.	
9	page of that exhibit?		9	(Government's Exhibit 720A received in evidence)	
10	A. Yes.		10	Q. The e-mail on the bottom is from Kate Morris, the Lehman	
11	Q. Mr. Goyal, if you could take a look at what's marked for		11	Brothers recruiter you just testified about. It's an e-mail	
12	identification as Government Exhibit 719B.		12	from Rob Ray, May 9, 2008. She wrote: Hi, Rob, thank you for	
13	A. Yes.		13	speaking with me earlier today. As discussed, please find	
14	Q. What is that?		14	attached the job description for the technology sector	
15	A. It's an e-mail I sent to the recruiter at Lehman Brothers.		15	specialist position in institutional corporate marketing.	
16	MR. TARLOWE: The government offers Government Exhibit		16	Is it your understanding that that's the same job that	
17	719B.		17	you had forwarded his résumé for or a different job?	
18	MR. FISHBEIN: No objection.		18	A. I'm not sure. They are discussing two jobs here, so I	
19	THE COURT: 719B is received.		19	don't know which one I forwarded. It was one of these two.	
20	(Government's Exhibit 719B received in evidence)		20	Q. Then Mr. Rob Ray forwarded that e-mail to you, is that	
21	Q. The e-mail on top, Mr. Goyal, is an e-mail you sent to		21	correct?	
22	Katie Morris at Lehman Brothers.		22	A. Yes.	
23	Who was Kate Morris?		23	Q. And that's on May 11, 2008?	
24	A. I think she was a recruiter at Lehman Brothers.		24	A. Correct.	
25	Q. If you could just scroll down to the e-mail from Ms. Morris		25	Q. And in addition to forwarding that e-mail to you he wrote:	
CBQMNEW2	Goyal - direct	Page 1448	CBQMNEW2	Goyal - direct	Page 1450
1	to you. The subject, referral request. Ms. Morris said to		1	Hey, Sandy, hope you are having a good weekend. Thanks a lot	
2	you: I am recruiting for the open research analyst position on		2	for forwarding my résumé to the Lehman recruiter. I won't read	
3	Ben Reitzes' team within equity research here at Lehman. I		3	the whole thing. The last sentence is: Since you know what my	
4	noticed in our résumé database that you were working IT		4	end goal is, can you please take a look and see whether this	
5	hardware equity research before you came to Neuberger. If you		5	will help me in any way? I will call you some time and get	
6	happen to have any previous coworkers or colleagues that have		6	your thoughts. Once again, thanks so much.	
7	some experience in equity research within the text sector that		7	You see that?	
8	you think might be interested, would you kindly share the job		8	A. Yeah.	
9	description below with them and have them send me their résumé.		9	Q. Again, in May of 2008, what did you understand his end goal	
10	Then scrolling up you replied to that e-mail saying:		10	to be?	
11	Hi, Kate, please find attached a résumé from my past colleague		11	A. Working in investment management.	
12	at Dell. You may also get a résumé from John Souza, who worked		12	Q. This is May 11, 2008. Looking at the chart behind you,	
13	with me at Prudential Securities.		13	when did Dell announce its quarterly earnings to the public for	
14	Whose résumé did you attach to the e-mail that you		14	that quarter?	
15	sent to the recruiter at Lehman Brothers?		15	A. May 29.	
16	A. Rob Ray's.		16	Q. If you could take a look at Government Exhibit 187, which	
17	MR. TARLOWE: I think that's page 3 of this document.		17	is in evidence.	
18	Q. That's the résumé you sent?		18	MR. TARLOWE: Mr. Hoffman, if you could blow up the	
19	A. Right.		19	top half down through the bottom e-mail. Thank you.	
20	Q. Just looking back at the e-mail that you sent to the		20	Q. This is an e-mail exchange between you and Jesse Tortora?	
21	recruiter, it's May 8, 2008. Where is that relative to Dell's		21	A. Yes.	
22	earnings cycle?		22	Q. On May 16, 2008?	
23	A. It is a few days after the quarter has closed and three		23	A. Correct.	
24	weeks before the quarterly results.		24	Q. And that's 13 days before the public earnings announcement?	
25	Q. If you could take a look at what's marked for		25	A. Right.	

CBQMNEW2	Goyal - direct	Page 1451	CBQMNEW2	Goyal - direct	Page 1453
1	Q. In the bottom e-mail Mr. Tortora wrote to you: Let me know		1	phone subscribed to Jesse Tortora.	
2	if you have a couple minutes just to run through the model		2	How long was that call?	
3	before the open today. Then Mr. Tortora sent you another		3	A. Three seconds.	
4	e-mail: Hey street at 33. I get 36 to 37. Let me know if you		4	Q. And the very next call is -- it says May 16 at 2:26 a.m.,	
5	agree. You apply: Yes. I get around 36, too.		5	so it's May 15 at 10:26 p.m. That's a call from the number	
6	What were you and Mr. Tortora discussing?		6	subscribed to Jesse Tortora to your home phone.	
7	A. EPS.		7	How long was that call?	
8	Q. By EPS, you mean earnings per share?		8	A. About seven and a half minutes.	
9	A. Right.		9	Q. And these calls on the night of May 15, 2008, when are	
10	Q. When he wrote street at 33, what did you understand that to		10	these relative to the e-mail exchange we just looked at between	
11	mean?		11	you and Mr. Tortora?	
12	A. Every Wall Street analysts are estimating 33 cents.		12	A. It's just the night before.	
13	Q. He got 36 to 37. You replied: I get around 36, too.		13	Q. Can you put up Government Exhibit 157 for a moment, which	
14	How did you come to the 36?		14	is the e-mail we just looked at. I'm sorry. That's the wrong	
15	A. I think it was plugging in Rob Ray's information to my		15	number exhibit. 187. Sorry.	
16	model and get that EPS.		16	So this e-mail exchange on the morning of May 16, you	
17	Q. What information from Rob Ray did you plug into your model?		17	and Mr. Tortora both come to earnings per share numbers that	
18	A. Revenues and margins.		18	are higher than the street consensus, is that correct?	
19	Q. What did you understand Mr. Tortora to be doing in order to		19	A. Yes.	
20	arrive at 36 to 37?		20	Q. Can you take a look at what's been marked for	
21	A. He did the same thing.		21	identification as Government Exhibit 726.	
22	Q. These e-mails are from the morning of May 16, 2008?		22	Is that an e-mail from Jesse Tortora to you on May 29,	
23	A. Yes.		23	2008?	
24	Q. I'm handing you what's marked for identification as		24	A. Yes.	
25	Government Exhibit 2607D, which is another excerpt from		25	MR. TARLOWE: The government offers Government Exhibit	
CBQMNEW2	Goyal - direct	Page 1452	CBQMNEW2	Goyal - direct	Page 1454
1	Government Exhibit 2607.		1	726.	
2	MR. TARLOWE: The government offers Government Exhibit		2	MR. FISHBEIN: No objection.	
3	2607D.		3	MR. MORVILLO: No objection.	
4	THE COURT: Any objection?		4	THE COURT: Government 726 is received.	
5	MR. FISHBEIN: No objection.		5	(Government's Exhibit 726 received in evidence)	
6	THE COURT: Government Exhibit 2607D is received.		6	Q. Mr. Goyal, this e-mail on May 29, 2008 at 4:36 p.m., when	
7	(Government's Exhibit 2607D received in evidence)		7	is that relative to Dell's earnings announcement?	
8	MR. TARLOWE: Mr. Hoffman, if you could please put		8	A. It is a few minutes after the earnings announcement.	
9	that up.		9	Q. What is the subject line that Mr. Tortora wrote to you?	
10	Q. The first row that's highlighted here, Mr. Goyal, these are		10	A. Nice job.	
11	records for your home phone?		11	Q. If you could take a look at what's marked for	
12	A. Correct.		12	identification as Government Exhibit 725. Is that an e-mail	
13	Q. And the first line says May 16, 2008, 1:58 a.m. Again,		13	from you to Fayad Abbasi May 29, 2008?	
14	it's in Greenwich meantime. 1:42 a.m. is the start time. This		14	A. Yes.	
15	is actually a call May 15, 2008 at 9:42 p.m.		15	MR. TARLOWE: The government offers Government Exhibit	
16	That's a call from your home phone number, is that		16	725.	
17	correct?		17	MR. FISHBEIN: No objection.	
18	A. Correct.		18	THE COURT: Government Exhibit 725 is received.	
19	Q. And it's to Rob Ray's cell phone number?		19	(Government's Exhibit 725 received in evidence)	
20	A. Correct.		20	Q. Focusing on the top two e-mails, these e-mails, May 29,	
21	Q. How long did that call last?		21	2008 at 1:48 and 1:51 p.m., those are a few hours before Dell's	
22	A. 16 minutes.		22	earnings announcement?	
23	Q. That call ended, it says, 1:58, which is actually 9:58 p.m.		23	A. Correct.	
24	The very next call you made from your home phone number was to		24	Q. And, first, the e-mail on the bottom, Mr. Abbasi wrote to	
25	415-596-4020, which, pursuant to the stipulation, is a cell		25	you: Did you talk to Niles?	

CBQMNEW2	Goyal - direct	Page 1455	CBQMNEW2	Goyal - direct	Page 1457
1	And who was Niles again?		1	Q. Then you sent another e-mail the next morning, June 24 at	
2	A. Dan Niles.		2	8:45 to Mr. Tortora saying: Tried yesterday but, again,	
3	Q. And then you wrote: Yes. I am sorry Dan Niles was --		3	couldn't get hold of him. Left a voice mail. Hopefully will	
4	A. Portfolio manager at Neuberger Berman.		4	catch him today.	
5	Q. Do you know what Mr. Niles' role was at Neuberger Berman?		5	Who is the him that you are referring to?	
6	A. Yes.		6	A. Rob Ray.	
7	Q. What was it?		7	Q. You see Mr. Tortora then forwarded that e-mail to Todd	
8	A. He was portfolio manager of a hedge fund within Neuberger		8	Newman.	
9	Berman located in San Francisco.		9	You see that?	
10	Q. And you wrote to Mr. Abbasi: Yes. He sounded surprised at		10	A. Yes.	
11	EPS beat and asked if I am confident about my contacts. The he		11	Q. If you could take a look at what's marked for	
12	you are referring to is Dan Niles?		12	identification as Government Exhibit 198.	
13	A. Yes.		13	Is that an e-mail exchange between you and Mr. Tortora	
14	Q. You wrote: I told him that it was pretty accurate last		14	on July 1, 2008?	
15	quarter.		15	A. Yes.	
16	What did you mean, it was pretty accurate last		16	MR. TARLOWE: The government offers Government Exhibit	
17	quarter?		17	198.	
18	A. I'm referring to the e-mail that I had sent last quarter		18	THE COURT: No objection?	
19	saying January quarter data points. And those were pretty		19	MR. FISHBEIN: No objection.	
20	accurate compared to the actual results.		20	MR. MORVILLO: No objection.	
21	Q. He asked if you are confident about your contacts and you		21	THE COURT: Government Exhibit 198 is received.	
22	told him: It was pretty accurate last quarter.		22	(Government's Exhibit 198 received in evidence)	
23	What was pretty accurate?		23	Q. Here Mr. Tortora said to you on July 1, 2008: Hey, Sandy,	
24	A. My information.		24	let me know if you pick up anything new. Subject line is Dell.	
25	Q. Which had come from where?		25	You reply: Sure. Hopefully will get something today, evening.	
CBQMNEW2	Goyal - direct	Page 1456	CBQMNEW2	Goyal - direct	Page 1458
1	A. Rob Ray.		1	What did you mean by that?	
2	Q. And then you continued that, he, Dan Niles, thought the		2	A. I mean that I'll contact Rob and we will get some	
3	stock will go up. I thought 5 percent range. He said could be		3	information from him.	
4	higher if the results are as we expect.		4	Q. If you could turn now to Government Exhibit 212, which is	
5	You see that?		5	in evidence.	
6	A. Yes.		6	This is an e-mail exchange between you and Jesse	
7	Q. Do you recall that conversation with Dan Niles that you're		7	Tortora on August 4, 2008?	
8	recounting to Mr. Abbasi?		8	A. Yes.	
9	A. I do not.		9	Q. When is this in relation to Dell's earnings announcement?	
10	Q. I am going to ask you now to turn to Government Exhibit		10	A. Just after the quarter has ended.	
11	197, which is in evidence.		11	Q. Before the earnings announcement?	
12	MR. TARLOWE: Mr. Hoffman, if you could enlarge the		12	A. Yes.	
13	portion that has the e-mail.		13	Q. Mr. Tortora wrote to you, subject line Dell: Hey, Sandy,	
14	Q. Starting on the bottom Mr. Tortora wrote to you on June 23,		14	keep me posted if you hear anything new. Thanks, Jesse.	
15	2008. Where is that in Dell's earning cycle?		15	You wrote back to Mr. Tortora saying: Sure. I plan	
16	A. Little bit after the half of the quarter has passed.		16	to check today, evening.	
17	Q. Mr. Tortora wrote to you, the subject Dell: Hey, Sandy,		17	What did you mean by that?	
18	please let me know if you hear anything new on Dell. Thanks,		18	A. I planned to call Rob Ray in the evening.	
19	Jesse. You wrote back: Sure will do. Wasn't able to contact		19	Q. Mr. Goyal, I'm showing you what's been marked for	
20	on weekend. Left message. Will try again in the evening.		20	identification as Government Exhibit 2607-G, which is an	
21	What were you referring to when you said, wasn't able		21	excerpt from Government Exhibit 2607.	
22	to contact on the weekend, left message, will try again in the		22	MR. TARLOWE: The government offers Government Exhibit	
23	evening?		23	2607-G.	
24	A. It means I wasn't able to contact Rob Ray on the weekend.		24	THE COURT: No objection.	
25	I left a message in his e-mail.		25	MR. FISHBEIN: No objection.	

CBQMNEW2	Goyal - direct	Page 1459	CBQMNEW2	Goyal - direct	Page 1461
1	MR. MORVILLO: No objection.		1	Q. And then Rob Ray continued: Also, as I start talking to	
2	THE COURT: Government Exhibit 2607-G is received.		2	some of the buy sides and sell sides, the question that comes	
3	(Government's Exhibit 2607-G received in evidence)		3	up often is why buy side or why sell side? How should I	
4	Q. The e-mail where you wrote up, I plan to check today,		4	approach this question? My response usually centers around my	
5	evening, is August 4, 2008.		5	interest in equities, strong tech background, and good writing	
6	MR. TARLOWE: Mr. Hoffman, if you could please put up		6	and modeling skills. For the buy side I also mention my	
7	Government Exhibit 2607-G.		7	interest in investing. But this is probably something they	
8	Q. The highlighted row is a call, it says August 5, 2008 at		8	hear from a lot of prospects. How do I distinguish myself and	
9	12:55 a.m. Again, because it's Greenwich meantime this is		9	what are some of the things they are looking for? Any	
10	actually a call at 8:55 p.m. on the night of August 4, 2008.		10	high-level pointers will be very helpful. Thanks and talk to	
11	That's a call, Mr. Goyal, from -- the from number, that's your		11	you soon. Cheers, Rob.	
12	home number.		12	If you could take a look now at what's marked for	
13	A. No.		13	identification as Government Exhibit 734.	
14	Q. 813-380-4010?		14	Is that an e-mail exchange between you and Rob Ray	
15	A. That's not my home number.		15	from August 14 of 2008?	
16	Q. Whose number is that?		16	A. Yes.	
17	A. That's Rob's number.		17	MR. TARLOWE: The government offers Government Exhibit	
18	Q. The call right before that.		18	734.	
19	A. Yes.		19	MR. FISHBEIN: No objection.	
20	Q. That's a call from your home number to Rob Ray's cell		20	THE COURT: Government Exhibit 734 is received.	
21	phone?		21	(Government's Exhibit 734 received in evidence)	
22	A. Correct.		22	Q. Starting with the e-mail on the bottom, on August 14, 2008	
23	Q. And that's a four-second long call?		23	you wrote to Rob Ray, the subject framework: Hi, Rob. Please	
24	A. Yes.		24	find attached a couple of investment analysis frameworks for	
25	Q. And then the call right after it is from Rob Ray to you?		25	reference.	
CBQMNEW2	Goyal - direct	Page 1460	CBQMNEW2	Goyal - direct	Page 1462
1	A. Correct.		1	What is that?	
2	Q. How long was that call?		2	A. This is basically in relation to the earlier e-mail stock	
3	A. Around 40 minutes.		3	pitch framework.	
4	Q. And if you could take a look at what's marked as Government		4	Q. What is it that you sent to him?	
5	Exhibit 733 for identification, which is an e-mail on the		5	A. I sent him a couple of our analysis -- our research reports	
6	following day.		6	which could be used as stock pitch.	
7	Is that an e-mail from Rob Ray to you on August 5,		7	Q. When you say our, what do you mean?	
8	2008?		8	A. It was basically research reports from Fayad to me.	
9	A. Yes.		9	Q. Then Rob Ray replied to you saying: Thanks, Sandy. This	
10	MR. TARLOWE: The government offers Government Exhibit		10	is very helpful. Cheers, Rob.	
11	733.		11	You see that?	
12	THE COURT: No objection.		12	A. Yes.	
13	MR. FISHBEIN: No objection.		13	Q. If you could take a look at what's marked for	
14	THE COURT: Government Exhibit 733 is received.		14	identification as Government Exhibit 756. Is that an e-mail	
15	(Government's Exhibit 733 received in evidence)		15	that Jesse Tortora sent you on August 11, 2008?	
16	Q. In this e-mail Rob Ray wrote to you: Hey, Sandy, it was		16	A. Yes.	
17	nice talking to you yesterday. Just a reminder to e-mail me		17	MR. TARLOWE: The government offers Government Exhibit	
18	that stock pitch framework we talked about.		18	756.	
19	What was he referring to when he said stock pitch		19	MR. FISHBEIN: No objection.	
20	framework?		20	THE COURT: Government Exhibit 756 is received.	
21	A. During interviews in investment management they ask to		21	(Government's Exhibit 756 received in evidence)	
22	pitch a stock, which is basically asking which stock you		22	Q. Now, Mr. Tortora forwarded you e-mails, is that correct?	
23	recommend to buy and then why, your reasoning behind or		23	A. Excuse me?	
24	analysis behind your recommendation. That is called stock		24	Q. Mr. Tortora forwarded to you an e-mail exchange between him	
25	pitch.		25	and Todd Newman, is that correct?	

CBQMNEW2	Goyal - direct	Page 1463	CBQMNEW2	Goyal - direct	Page 1465
1	A. Yes.		1	Q. Within Dell?	
2	Q. And the subject line is AMD.		2	A. Yes.	
3	Do you know what that is?		3	Q. Where were you working when he made that switch?	
4	A. Yes.		4	A. Neuberger Berman.	
5	Q. What's that?		5	Q. Where was Mr. Tortora working?	
6	A. It's a semiconductor company.		6	A. Diamondback.	
7	Q. Looking at the e-mail, the top two e-mails?		7	Q. Did you continue to speak to Rob Ray after he left investor	
8	A. Yes.		8	relations?	
9	Q. Take a moment and look at that in the context of the		9	A. Yes.	
10	e-mail.		10	THE COURT: Do you have a time frame for when he left	
11	Did you understand that paragraph to be about AMD or		11	investor relations and went to corporate development?	
12	about a different company?		12	THE WITNESS: I think -- I don't exactly know. Late	
13	A. It talks about Dell.		13	2009 -- late 2008, early 2009, some time there.	
14	Q. And Mr. Tortora wrote to Mr. Newman in the second sentence:		14	Q. What, if any, information did Rob Ray provide to you about	
15	Why we need to wait for a roll-up.		15	Dell's financial results after he left investor relations?	
16	What roll-up did you understand him to be saying that		16	A. I don't recall any significant changes in the information I	
17	he was waiting for?		17	got.	
18	A. Consolidating all the segment information and preparing for		18	Q. If you could take a look at Government Exhibit 296, which	
19	the financial quarterly results.		19	is in evidence. The e-mail at the bottom is from Mr. Tortora	
20	Q. For what company?		20	to you, subject Dell. Hey, Sandy, please keep me posted.	
21	A. For Dell.		21	Stock been going straight up since analyst day. My guess is GM	
22	Q. Then he forwarded that to you.		22	going to be problem when all said and done.	
23	You see that?		23	You wrote back: Hi, Jesse, sure. Will do checks	
24	A. Yes.		24	shortly. Was waiting for quarter to end or come closer so that	
25	Q. And where were you going to get that roll-up from?		25	numbers are more firm.	
CBQMNEW2	Goyal - direct	Page 1464	CBQMNEW2	Goyal - direct	Page 1466
1	A. From Rob Ray.		1	What did you mean when you said, so that numbers are	
2	THE COURT: Is there an objection?		2	more firm?	
3	MR. FISHBEIN: Objection. Speculation. He can		3	A. It means when quarter ends or closer to when you have more	
4	interpret this, but I am not sure that's a proper question.		4	and more actual information about the quarter. So then numbers	
5	THE COURT: Did you have a plan to get such		5	are actually closer to the actual quarterly numbers.	
6	information?		6	Q. When you wrote, will do checks shortly, what did you mean?	
7	THE WITNESS: Excuse me?		7	A. I meant I will call Rob shortly.	
8	THE COURT: Did you have a plan to get such		8	Q. And Mr. Tortora forwarded that e-mail on to Todd Newman	
9	information?		9	FYI. You see that?	
10	THE WITNESS: After this e-mail?		10	A. Yes.	
11	THE COURT: Yes. Or before.		11	Q. Turning to what's marked for identification as Government	
12	THE WITNESS: Yeah. I think this was reported to		12	Exhibit 300. Actually, that's in evidence.	
13	me -- they say I will take it as a pointer for me to call Rob		13	Mr. Tortora wrote to you on the bottom: Hi, Sandy,	
14	and see -- or call Rob to see how this had impacted the gross		14	just checking in if got anything new. Thanks. You wrote:	
15	margin.		15	Nothing yet. Tried to contact yesterday. Will definitely have	
16	Q. Did you learn at some point that Rob Ray left the investor		16	something by Monday.	
17	relations department at Dell?		17	What were you referring to?	
18	A. Yes.		18	A. I tried to contact Rob Ray and contact him again.	
19	MR. TARLOWE: You could take that down, Mr. Hoffman.		19	Q. Where is that in relation to Dell's earnings announcement?	
20	Q. Where did he go?		20	A. It is about a couple of weeks before the announcement.	
21	A. To corporate development.		21	Q. And then you see Mr. Tortora forwarded that on to	
22	THE COURT: To what?		22	Mr. Newman?	
23	THE WITNESS: Corporate development.		23	A. Yes.	
24	THE COURT: Corporate development?		24	Q. If you could turn now to Government Exhibit 305, which is	
25	THE WITNESS: Yes.		25	in evidence, the bottom e-mail from Mr. Tortora to you. It	

CBQMNEW2	Goyal - direct	Page 1467	CBQMNEW2	Goyal - direct	Page 1469
1	says: Hi, Sandy, please let me know if you can get an update		1	A. That was a personal friend.	
2	this week. Thanks.		2	Q. Where did you meet him?	
3	That's on August 24, 2009. When is that in relation		3	A. In business school.	
4	to Dell's earnings announcement?		4	Q. What, if any, information did he provide about Dell's	
5	A. It's three days before.		5	business?	
6	Q. You wrote back: Talked over weekend. Basically no change		6	A. General business conditions in his group.	
7	from prior. Everything same.		7	Q. When you got information from him about his business group,	
8	What did you mean when you said talked over weekend?		8	what, if anything, did you do with it?	
9	Who did you talk to?		9	A. Give it to Jesse.	
10	A. That means I talked to Rob Ray over the weekend.		10	Q. Did there come a time when Rob Ray left Dell?	
11	Q. And then you see Mr. Tortora forwarded that to Mr. Newman		11	A. Yes.	
12	saying. FYI, spoke to him. Said all still the same, and will		12	Q. Do you remember when that was?	
13	do final check this week to confirm and also to see if can get		13	A. I think some time March, April, some time 2010.	
14	any more details.		14	Q. Did he leave the Texas area?	
15	Do you see that?		15	A. Yes.	
16	A. Yes.		16	Q. Where did he move to?	
17	Q. Mr. Newman wrote back to you, TY?		17	A. New York.	
18	A. Yes.		18	Q. Did you speak to him after he moved to New York?	
19	Q. After you began speaking -- excuse me. Withdrawn.		19	A. Yes.	
20	After you began receiving information from Rob Ray,		20	Q. Did you see him?	
21	did you continue speaking to your other friends at Dell?		21	A. Yes.	
22	A. Yes.		22	Q. Where?	
23	Q. Did you continue speaking to them about Dell's business?		23	A. Once we invited him and his wife over for dinner.	
24	A. A little bit. It declined significantly from what I used		24	Q. Did you have any discussions with Rob Ray about traveling	
25	to talk earlier.		25	together?	
CBQMNEW2	Goyal - direct	Page 1468	CBQMNEW2	Goyal - direct	Page 1470
1	Q. Why did it decline?		1	A. Yes.	
2	A. Because I was getting overall end information from Rob Ray,		2	Q. What did you say, what did he say?	
3	so I really didn't need that.		3	A. It was July 4 weekend and we were thinking of going to Lake	
4	Q. If you could look at what's marked for identification as		4	George area. So I asked him, we are planning to go there, if	
5	Government Exhibit 717.		5	he is also interested. And then our plans changed. We didn't	
6	Is that an e-mail exchange between you and Mr. Tortora		6	go. I am not sure if he made any plans after that point.	
7	on April 25, 2008?		7	Q. Were there any other times when you talked to Rob Ray about	
8	A. Yes.		8	traveling together?	
9	MR. TARLOWE: The government offers Government Exhibit		9	A. Yes. Once they were visiting -- they were going somewhere	
10	717.		10	in the Middle East, Turkey, Egypt, and so they are inquiring if	
11	MR. FISHBEIN: No objection.		11	I'm interested in going there. I was not, so we didn't go.	
12	THE COURT: Government Exhibit 717 is received.		12	Q. When you worked at Neuberger Berman, did you have a	
13	(Government's Exhibit 717 received in evidence)		13	financial model for Dell?	
14	Q. In the bottom e-mail Mr. Tortora wrote to you some		14	A. Yes.	
15	information he was picking up about HPQ desktop. And then he		15	Q. When did you create that model?	
16	ends the sentence with: Let me know if check in with your		16	A. I think it was initially created when I was working at	
17	guys. You reply: Will check again with my Dell U.S.		17	Prudential.	
18	commercial contact.		18	Q. What kind of model was it?	
19	What did you mean by that?		19	A. It's something called bottoms-up financial model.	
20	A. It means my friend who worked in Dell U.S. commercial		20	Q. What does that mean?	
21	segment.		21	A. It means it has all the information regarding complete	
22	Q. What is the Dell U.S. commercial segment?		22	details, product level details. So then we forecast -- each	
23	A. It's the segment that sells Dell's products to U.S.		23	forecast the information at product level, and then add them up	
24	companies, not to consumers.		24	together to get the estimates for total consolidated company	
25	Q. How did you know that contact?		25	levels. That's why it's called bottoms up.	

CBQMNEW2	Goyal - direct	Page 1471	CBQMNEW2	Goyal - direct	Page 1473
1	Q. You use that model to try to predict future earnings?		1	Q. Starting on the bottom e-mail that Mr. Abbasi sent to you	
2	A. Yes, future revenues, margin earnings, yes.		2	on June 20, 2008, Mr. Abbasi said to you, this is on the	
3	Q. How far into the future?		3	bottom: Assuming everything is business as usual, we should	
4	A. Typically, one to two years.		4	try to set up a call with Schuckenbrock, maybe two to three	
5	Q. After you began receiving information from Rob Ray, did you		5	weeks. Who is Schuckenbrock?	
6	continue to maintain that model?		6	A. As far as I remember, he was Steve Schuckenbrock. He was	
7	A. Yes.		7	the vice-president for services at Dell.	
8	Q. Why?		8	Q. You wrote back: Good idea. Do you want me to call Dell	
9	A. Well, there is some reason. One, a lot of time people like		9	IR. Shep, most probably, or do it yourself through Lynne	
10	portfolio managers, they just don't want to see the number.		10	Tyson.	
11	They want to go into detail behind the numbers, like look at		11	Who was Lynne Tyson?	
12	the bottoms-up model, what is driving the change, so I have to		12	A. She was the head of investor relations at Dell at that	
13	make that. Also, the model is for not just for one quarter.		13	time.	
14	It's for multiple quarters going forward, four to eight future		14	Q. And Mr. Abbasi wrote back: Go ahead and see if Shep can do	
15	quarters. Also, most of the work on the model is usually done		15	it for us. The less I talk to Lynn, the happier I am.	
16	just after the company has reported its earnings. And I		16	And you then wrote back: Just called. Shep is out	
17	typically didn't have any information from Rob Ray at that		17	until June 25. Will contact him again next week.	
18	time, so I needed to -- this model to forecast it.		18	You see that?	
19	Q. I believe you testified last week that if there were times		19	A. Yes.	
20	when you wanted to speak to management of a public company you		20	Q. At this time, in June 2008, did Rob Ray work in investor	
21	typically went through investor relations to set that up, is		21	relations at Dell?	
22	that correct?		22	A. I was not sure at this time if he was there or he shifted.	
23	A. Yes.		23	Q. Take a look at what's marked for identification as	
24	Q. Why did you do that?		24	Government Exhibit 736.	
25	A. That was the normal protocol.		25	You see that, Mr. Goyal?	
CBQMNEW2	Goyal - direct	Page 1472	CBQMNEW2	Goyal - direct	Page 1474
1	Q. Was that true of Dell as well?		1	A. Yes.	
2	A. Yes.		2	Q. That's an e-mail exchange between you and Mr. Tortora on	
3	Q. And who in investor relations department at Dell did you		3	September 16, 2008?	
4	speak to if you wanted to arrange a meeting or a conversation		4	A. Correct.	
5	with management?		5	MR. TARLOWE: The government offers Government Exhibit	
6	A. Shep Dunlap was our primary contact at Neuberger Berman.		6	736.	
7	Q. Did you know Shep Dunlap when you worked at Dell?		7	MR. FISHBEIN: No objection.	
8	A. Yes.		8	THE COURT: Government Exhibit 736 is received.	
9	Q. How?		9	(Government's Exhibit 736 received in evidence)	
10	A. We worked in the same department.		10	Q. The first e-mail on the bottom from Mr. Tortora to you,	
11	Q. Were there other people in Dell in investor relations who		11	subject, Dell/Lehman. How is everything at NB? Does that mean	
12	you spoke to?		12	Neuberger Berman?	
13	A. I may have spoken to others as well, yes.		13	A. Yes.	
14	Q. If you could take a look at what's marked for		14	Q. Fayad said okay, glad to hear. I'm surprised Dell out	
15	identification as Government Exhibit 759.		15	negative this early in Q. Any thoughts?	
16	You see that, Mr. Goyal?		16	What did you understand Mr. Tortora to mean when he	
17	A. Yes.		17	said I'm surprised Dell out negative this early in June?	
18	Q. Is that an e-mail exchange between you and Fayad Abbasi		18	A. I think it was they reported their earnings some time	
19	from June 20, 2008?		19	August 28, 2008. And then just a couple of weeks later they	
20	A. Correct.		20	made a big announcement saying they are seeing weakness in	
21	MR. TARLOWE: The government offers Government Exhibit		21	their sales, so that will negatively impact their numbers for	
22	759.		22	the quarter.	
23	MR. FISHBEIN: No objection.		23	Q. Let me show you Government Exhibit 314A, which is in	
24	THE COURT: Government Exhibit 759 is received.		24	evidence. That's an 8K for Dell and has an attachment it has a	
25	(Government's Exhibit 759 received in evidence)		25	press release from September 16, 2008.	

CBQMNEW2	Goyal - direct	Page 1475	CBQMNEW2	Goyal - direct	Page 1477
1	Do you see that?		1	relevance.	
2	A. Yes.		2	THE COURT: I am not sure. Why don't we lay a little	
3	Q. Is that what you understood Mr. Tortora to be referring to		3	foundation to see what relevance there is.	
4	when he said, I'm surprised Dell out negative this early in		4	MR. TARLOWE: Certainly, your Honor.	
5	quarter?		5	Q. Are you familiar with a company called Primary Global	
6	A. Yes.		6	Research?	
7	Q. And going back to Government Exhibit 736, you replied:		7	A. Yes.	
8	Thanks, Jesse. Have no idea why those idiots made that		8	Q. What is that?	
9	statement. Will check with Shep why they did that.		9	A. It's PGR, one of those expert consulting firms.	
10	What did you mean when you said you had no idea why		10	Q. Did you use PGR when you were at Neuberger Berman?	
11	they made that statement?		11	A. Yes, we did.	
12	A. I think it was very unusual for a company to make a change		12	Q. Did you speak to somebody at PGR who you knew as Dan D.?	
13	just two weeks into the quarter when they have spoken to		13	A. Yes.	
14	investors just a couple of weeks ago. They should have said		14	Q. Where did Dan D. work?	
15	that earlier when they made the quarterly announcement.		15	A. My understanding is he worked at Dell.	
16	Q. And then you said: Will check with Shep why they did that.		16	Q. When you talked to Dan D., did he provide any information	
17	That's a reference to Shep Dunlap?		17	to you about Dell?	
18	A. Yes.		18	A. Yes.	
19	Q. Why were you going to check with him?		19	MR. TARLOWE: The government renews the offer of	
20	A. He was the primary investor relations contact with		20	Government Exhibit 748.	
21	Neuberger Berman.		21	MR. FISHBEIN: Same objection.	
22	Q. Now, I believe you testified last week that at Neuberger		22	THE COURT: Overruled. I think it's relevant to some	
23	you used third-party data or research, is that correct?		23	testimony that we have already had.	
24	A. Yes.		24	So Government Exhibit 748 is received.	
25	Q. What did you mean by that?		25	(Government's Exhibit 748 received in evidence)	
CBQMNEW2	Goyal - direct	Page 1476	CBQMNEW2	Goyal - direct	Page 1478
1	A. It means data from companies like IDC Gartner, Forrester		1	Q. In this e-mail you wrote to Mr. Abbasi: Here is the short	
2	Research and a couple of others.		2	list of people for the PGR calls. You have a list of names.	
3	Q. Did you use expert networking firms when you were at		3	The names all seem to be first name and last initial.	
4	Neuberger Berman?		4	Why is that?	
5	A. Yes, we did.		5	A. I think that's how it was displayed on PGR's website.	
6	Q. What is that?		6	Q. When you actually spoke to these people, did you learn	
7	A. These are companies that give you access to industry		7	their last names?	
8	experts.		8	A. No.	
9	Q. Do you pay for that service?		9	Q. Looking at Dan D. you wrote in parenthesis, the Dell guy.	
10	A. Yes.		10	What did you mean by that?	
11	Q. When you say they gave you access to these people, how did		11	A. It means that I understood that he worked at Dell.	
12	you communicate with those people?		12	Q. What, if any, information did he, Dan D., provide to you	
13	A. On the phone.		13	about Dell?	
14	Q. Where did those people work?		14	A. It was mostly about sales of the hard disk drives and then	
15	A. Most of them worked in companies.		15	sales of the units, the units they are shipping in the quarter.	
16	Q. If you could take a look at what's marked for		16	Q. Did you have an understanding as to whether the information	
17	identification as Government Exhibit 748.		17	that he provided to you about Dell was confidential?	
18	You see that?		18	A. Yes.	
19	A. Yes.		19	Q. What was your understanding?	
20	Q. It's an e-mail that you sent to Fayad Abbasi on September		20	A. It was confidential.	
21	9, 2008?		21	THE COURT: What was the basis of that understanding?	
22	A. Yes.		22	THE WITNESS: It was just, this is information that	
23	MS. APPS: The government offers Government Exhibit		23	should not be given to public because this information is not	
24	748.		24	available from other sources. The company doesn't publish that	
25	MR. FISHBEIN: Your Honor, this I object to the		25	information until its quarterly results.	

CBQMNEW2	Goyal - direct	Page 1479	CBQMNEW2	Goyal - direct	Page 1481
1	THE COURT: Who told you this?		1	Q. Is that an e-mail that Mr. Abbasi forwarded to you on	
2	THE WITNESS: That was just my understanding.		2	November 5, 2008?	
3	THE COURT: You inferred it from what you knew of him?		3	A. Right.	
4	THE WITNESS: Inferred it based on my working in		4	MR. TARLOWE: The government offers Government Exhibit	
5	investment management that this kind of information is very		5	737.	
6	confidential.		6	MR. FISHBEIN: No objection.	
7	Q. Did you ever mention to anybody in Dell investor relations		7	THE COURT: Government Exhibit 737 is received.	
8	that you talked to Dan D. about Dell?		8	(Government's Exhibit 737 received in evidence)	
9	A. No.		9	Q. The bottom e-mail, which Mr. Abbasi then forwarded to you,	
10	Q. And during the time you were at Neuberger, did you ever		10	it's an e-mail from Sam Adondakis to Jesse Tortora, Jon	
11	learn Dan D.'s last name?		11	Horvath, Danny Kuo, and Fayad Abbasi.	
12	A. No.		12	You see that?	
13	Q. You also have listed Tony L. You refer to him as our AMD		13	A. Yes.	
14	guy.		14	Q. It says Dell/HDD checks?	
15	What did you mean by that?		15	A. Right.	
16	A. He was the person I understood who worked at AMD.		16	Q. What was your understanding of where this information was	
17	Q. Did you yourself speak directly to Tony L.?		17	coming from?	
18	A. Yes.		18	A. I understood this came from Dan D.	
19	Q. What, if any, information did Tony L. provide to you about		19	Q. Dan D. being the person at PGR?	
20	AMD?		20	A. Correct.	
21	A. He provided information about units shipped out of AMD and		21	Q. If you could take a look at what's marked for	
22	how much to customers. I think sometimes he also gave revenue		22	identification as Government Exhibit -- just going back to	
23	and I think he also once gave some margin information.		23	that, can you just scroll up. You see that Mr. Abbasi	
24	Q. During the time you worked at Neuberger Berman, what was		24	forwarded that to you.	
25	your understanding of the relationship between Mr. Abbasi and		25	You see that?	
CBQMNEW2	Goyal - direct	Page 1480	CBQMNEW2	Goyal - direct	Page 1482
1	Mr. Tortora?		1	A. Correct.	
2	A. They were friends.		2	Q. If you could look now at what's marked for identification	
3	Q. Did you know one way or the other whether they had any		3	as Government Exhibit 739. Do you see that, Mr. Goyal?	
4	business association?		4	A. Yes, I do.	
5	A. Yes. They used to share the information.		5	(Continued on next page)	
6	Q. How do you know that?		6		
7	A. There were a few e-mails that went around to a group of		7		
8	people that included both of them, those e-mails.		8		
9	Q. How did you see those e-mails?		9		
10	A. Sometimes Fayad or Jesse forwarded some of those e-mails to		10		
11	me.		11		
12	Q. Do you recall any of the other people who were on those		12		
13	e-mails?		13		
14	A. Yes.		14		
15	Q. Who?		15		
16	A. Sam Adondakis, Jon Horvath, and Danny Kuo.		16		
17	Q. Did you know any of those people yourself?		17		
18	A. Sam Adondakis was the one who interviewed me at Prudential.		18		
19	I met him once more at some function. Jon Horvath, he used to		19		
20	be a client at Prudential, and I think I met him once or twice,		20		
21	maybe three times. And Danny I didn't know.		21		
22	Q. If you could take a look at what's marked for		22		
23	identification as Government Exhibit 737.		23		
24	Do you have that in front of you, Mr. Goyal?		24		
25	A. Yes.		25		

CBQFNEW3	Goyal - direct	Page 1483	CBQFNEW3	Goyal - direct	Page 1485
1	Q. What is that?		1	(In open court; jury not present)	
2	A. This is an e-mail Jesse forwarded me.		2	THE COURT: Okay, have a seat. Short break? If	
3	Q. And it's about what company?		3	there's anything, we can take it before the jury comes out, but	
4	A. Nvidia.		4	otherwise, ten minutes.	
5	MR. TARLOWE: Government offers Government Exhibit		5	(Recess)	
6	739.		6	THE COURT: Everybody here, we're ready to go?	
7	MR. FISHBEIN: No objection, your Honor.		7	MR. WEINGARTEN: Quick question, Judge, on scheduling.	
8	THE COURT: Government exhibit 739 is received.		8	Wednesday morning we're not going to be here, Friday we're not	
9	(Government's Exhibit 739 received in evidence)		9	going to be here, the other days we'll be here and we're going	
10	Q. Looking first at the bottom e-mail from Danny Kuo to Victor		10	to 5:30?	
11	Dosti, subject NVDA. What is NVDA?		11	THE COURT: Let's see. Today we're going until 4:30,	
12	A. It's the stock symbol for Nvidia.		12	because I have an oral argument in a criminal case, and then	
13	Q. Then there's some information in that e-mail about Nvidia,		13	tomorrow we'll go to 5:30 and Wednesday we'll go till 5:30.	
14	do you see that?		14	Thursday we'll go to 5:30. If we finish a witness with ten	
15	A. Yes.		15	minutes to go I might break, but otherwise we'll go till 5:30.	
16	Q. Then scrolling up, you see Mr. Kuo forwarded that to Jesse		16	I guess I'll let them know before lunch that we're going to go	
17	Tortora, Sam Adonakis John Horvath and Fayad Abbasi and Mr.		17	until 4:30 today and Wednesday morning is off.	
18	Tortora forwarded it to Mr. Newman, and then scrolling up you		18	MR. WEINGARTEN: We're going to start at 12:30?	
19	see Mr. Tortora forwarded it to you?		19	THE COURT: I guess it will be 1:00. My program is	
20	A. Yes.		20	going to finish around 12:30 so I'll need a half hour to get	
21	Q. At that time in April of 2009, what was your function at		21	back.	
22	Neuberger Berman?		22	All right, let's get the jury.	
23	A. I was, still had been on IT hardware stock and some		23	(Continued on next page)	
24	semiconductor but at that time I had started my own covering of		24		
25	select semiconductor names. I had started or was about to		25		
CBQFNEW3	Goyal - direct	Page 1484	CBQFNEW3	Goyal - direct	Page 1486
1	start starting with Nvidia.		1	(In open court; jury present)	
2	Q. So you were going to beginning covering Nvidia yourself?		2	THE COURT: Ladies and gentlemen, let me tell you	
3	A. Right.		3	about scheduling so you can make your own plans. We'll go	
4	Q. Had you told Mr. Tortora about that?		4	today until 4:30. I have another matter at 4:30. Tomorrow	
5	A. Yes.		5	we'll pick up at 9:30 normal time, go to 5:30. Wednesday, one	
6	Q. If you could now look at what's marked for identification		6	of you has an appointment in the morning so we're not going to	
7	as Government Exhibit 740.		7	meet in the morning Wednesday. What we'll do is start	
8	MR. FISHBEIN: Your Honor, I'm sorry, I could use a		8	Wednesday at 1. So you got your morning to yourself, eat lunch	
9	short break, if that's possible.		9	before you come and then we'll go from 1 until 5:30 on	
10	THE COURT: All right. It's about 11:30. Why don't		10	Wednesday, then we'll sit all day Thursday and then Friday we	
11	we take a break, ladies and gentlemen. We'll come back in		11	won't sit, as we typically don't sit on Fridays. Okay? So	
12	about ten minutes. Don't discuss the case at all, but stretch		12	that's the schedule for the week.	
13	your legs, use the rest room. All rise for the jury.		13	If there are any other issues, talk to Mr. Feith about	
14	(Jury excused)		14	it, but so you can make your own plans. Wednesday morning we	
15	(Continued on next page)		15	will not be sitting, so we'll go from one until 5:30. All	
16			16	right, let's resume with the direct examination by Mr. Tarlowe.	
17			17	MR. TARLOWE: Thank you, your Honor.	
18			18	BY MR. TARLOWE:	
19			19	Q. Mr. Goyal, if you could please turn to what's been marked	
20			20	for identification as Government Exhibit 740. Do you see that?	
21			21	A. Yes.	
22			22	Q. What is that?	
23			23	A. It's e-mail that Jesse forwarded to me.	
24			24	MR. TARLOWE: The government offers Government Exhibit	
25			25	740.	

CBQFNEW3	Goyal - direct	Page 1487	CBQFNEW3	Goyal - cross	Page 1489
1	MR. FISHBEIN: No objection.		1	A. Again, I mean that could be, it seems to be right.	
2	THE COURT: Government Exhibit 740 is received.		2	Q. You said you had friends at Dell whom you spoke to about	
3	(Government's Exhibit 740 received in evidence)		3	business trends, right?	
4	Q. Starting on the bottom e-mail it's an e-mail from Danny Kuo		4	A. Yes.	
5	to Victor Dosti, subject is NVDA. Again, that is the ticker		5	Q. Just to be clear, I'm not referring to Rob Ray. I'm	
6	symbol for what company?		6	speaking about the other friends you testified about. Do you	
7	A. Nvidia.		7	understand that?	
8	Q. Mr. Kuo wrote to Mr. Dosti, "NVDA checks. Final read		8	A. Yes.	
9	before the print." If I could show Government Exhibit 91, that		9	Q. These are people you knew from University of Texas?	
10	e-mail from August 6 of 2009, when was that in relation to the		10	A. Right.	
11	public announcement?		11	Q. Or from working at Dell?	
12	A. It's the same day.		12	A. Right.	
13	Q. What time did Nvidia announce its earnings?		13	Q. And these are social friends of yours as well?	
14	A. A little bit before 5:00 p.m.		14	A. Correct.	
15	Q. Scrolling up, Mr. Kuo then forwarded that e-mail to Jesse		15	Q. So you would go to their houses for social occasions, is	
16	Tortora, Sam Adonakis, John Horvath and Fayad Abbasi. Do you		16	that right?	
17	see that?		17	A. True.	
18	A. Yes.		18	Q. And they would socialize with you perhaps at your house?	
19	Q. And Mr. Tortora forwarded that on to you.		19	A. Yes.	
20	A. Right.		20	Q. Now, do I understand correctly that one of your friends	
21	Q. At that time, were you covering Nvidia at Neuberger Berman?		21	worked in the consumer division at Dell, is that right?	
22	A. Yes.		22	A. Yes.	
23	MR. TARLOWE: No further questions.		23	Q. And that consumer division deals with desktops, laptops and	
24	THE COURT: All right. Cross-examination, Mr.		24	other products for the consumer market, is that right?	
25	Fishbein?		25	A. For selling to U.S. consumers, yes.	
CBQFNEW3	Goyal - direct	Page 1488	CBQFNEW3	Goyal - cross	Page 1490
1	CROSS-EXAMINATION		1	Q. And then I think you said you had a friend who was in the	
2	BY MR. FISHBEIN:		2	commercial division, is that right?	
3	Q. Good afternoon, Mr. Goyal.		3	A. Right.	
4	A. Good afternoon.		4	Q. And what does the commercial division deal with?	
5	Q. Mr. Goyal, my name is Stephen Fischbein. I represent Todd		5	A. It's for the companies, large companies in U.S.	
6	Newman. Let me just start, I want to make sure I understand		6	Q. Would that include, for example, servers?	
7	the dates of some of your employment. I believe you said you		7	A. Yes.	
8	were at Prudential from May 2006 until the summer of 2007, is		8	Q. And is that sometimes referred to also as the enterprise	
9	that correct?		9	business?	
10	A. Prudential was June 2006. June -- I mean summer 2006 to		10	A. I think so, yes.	
11	summer 2007, yeah.		11	Q. Did you also have a friend who was involved with the	
12	Q. Then you began at Neuberger Berman when?		12	services segment of Dell's business?	
13	A. Sometime in July-August in 2007.		13	A. I think so.	
14	Q. Do you remember the month that you began at Neuberger		14	Q. And services refers to what?	
15	Berman?		15	A. It's the services that are provided to customers. It can	
16	A. Not hundred percent sure. I think early July.		16	consist of like warranty services or support over the phone and	
17	Q. If you could look at Defense Exhibit 9910, it's in your tab		17	for larger customers it can consist of specialty, like setting	
18	1. If you could just read the first paragraph to yourself.		18	up the servers and so on.	
19	A. All right.		19	Q. And you're familiar with Dell's business because you worked	
20	Q. Does that refresh your memory as to when you started at		20	there, right?	
21	Neuberger Berman?		21	A. Right.	
22	A. It says that we expect your employment to begin on or about		22	Q. And so the consumer business, the commercial or enterprise	
23	July 16, 2007.		23	business and the service business, that simply makes up Dell's	
24	Q. Do you believe you began around mid-July of 2007 at		24	business, right?	
25	Neuberger Berman?		25	A. There are many parts to the business. You said consume --	

CBQFNEW3	Goyal - cross	Page 1491	CBQFNEW3	Goyal - cross	Page 1493
1	Q. The question is whether consumer, commercial and		1	A. Yes.	
2	services -- let me ask a different question -- those make up		2	Q. And is this an example of some of the types of information	
3	the vast majority of Dell's business?		3	you got from your friends other than Rob Ray?	
4	A. Services is kind of a product line, so you're talking about		4	A. Right.	
5	consumers, and others, they are like the customer types.		5	Q. Now, if we look at the e-mail, this is dated January 7,	
6	Services is kind of product type, so the customers are either		6	2008, right?	
7	like consumers, small and medium businesses, large enterprises,		7	A. Right.	
8	public companies and so on and so forth, from customer side,		8	Q. And the first item is U.S. corporate business, right?	
9	that kind of mix, overall business together.		9	A. Yes.	
10	Q. But by revenue, wouldn't it be fair to say that most of		10	Q. And so that's what we referred to before, that's the	
11	Dell's revenue comes from consumer products or commercial		11	servers and other sales to big companies.	
12	products?		12	A. Big companies, right.	
13	A. Most, it may be. I don't have the numbers, but I think so.		13	Q. And you make the statement "no growth Y/Y." What does that	
14	Q. Now, you also had friends within the marketing department		14	mean?	
15	of Dell, is that right?		15	A. Y/Y means year-over-year, so as compared to last year.	
16	A. Marketing in I think U.S. marketing is related to normally		16	Q. What kind of growth are you talking about?	
17	a segment, so it's consumer segment or it could be some product		17	A. Revenue growth.	
18	marketing, so yes.		18	Q. So that's a comment on revenues, is that correct?	
19	Q. And some of your friends worked in the marketing area,		19	A. True.	
20	right?		20	Q. And then you say, quote, "Some decline in margins	
21	A. I think they were like marketing U.S. consumer, if I'm		21	sequentially." Do you see that?	
22	right.		22	A. Right.	
23	Q. And then what about corporate planning, did you also have		23	Q. What does that mean?	
24	friends that were in corporate planning?		24	A. It means there is some decline in margins. I'm not sure	
25	A. They were my colleagues that I worked with in corporate		25	there whether I'm referencing gross margin or operating margin	
CBQFNEW3	Goyal - cross	Page 1492	CBQFNEW3	Goyal - cross	Page 1494
1	planning.		1	and sequentially means last quarter.	
2	Q. And these are all people that you kept in touch with after		2	Q. But margins, am I correct, refers to either gross margin or	
3	you left Dell, correct?		3	operating margin or both, is that right?	
4	A. About all my previous friends, the social friends, and		4	A. Correct.	
5	corporate planning, I didn't, they were not my personal		5	Q. And sequentially means how the margins are doing compared	
6	friends, so --		6	to the previous quarter?	
7	Q. So what you're saying is that consumer, commercial,		7	A. Correct.	
8	services, those people you kept in touch with, right?		8	Q. So you would get marginal information from these friends,	
9	A. Right. They were the friends that, they were personal		9	correct?	
10	friends from my days in school. Those are the ones that I kept		10	A. Not always. Like I may have gotten this quarter, but it	
11	in touch with.		11	doesn't mean I always got it.	
12	Q. And these are people that you got information from about		12	Q. I'm not asking you whether you got it every time, but that	
13	Dell after you left, right?		13	is a type of information you would get?	
14	A. Right.		14	A. I got in this quarter. Sometimes, yes.	
15	Q. And what about marketing and corporate planning? Did you		15	Q. And you continued to speak to these friends after January	
16	get information about marketing and corporate planning after		16	'08, right?	
17	you left Dell?		17	A. Yes.	
18	A. Not corporate planning. And marketing, I think consumer		18	Q. If you look at the next number, it's number 2, it says	
19	and marketing may be the same thing because it's a subdivision		19	"U.S. consumer." Do you see that?	
20	between consumers, but I don't think I got anything regarding		20	A. Yes.	
21	marketing.		21	Q. And that's referring to the consumer segment, laptops and	
22	Q. If we could look at Government Exhibit 75. It's already in		22	other computers sold to the public, right?	
23	evidence, it's at your tab 2. And if we could put that up on		23	A. Yes.	
24	the screen. You remember that the prosecutor showed you this		24	Q. And do you see you have a comment, "Revenue growth is fine	
25	e-mail. Do you remember that?		25	expect sequential market share gains." Do you see that?	

CBQFNEW3	Goyal - cross	Page 1495	CBQFNEW3	Goyal - cross	Page 1497
1 A. Yes.			1 used to be there, then it got merged with consumer. It got		
2 Q. What does that mean?			2 flung around so I'm not sure where it was.		
3 A. Market share, it means what percentage of market, in terms			3 Q. But does this mean that one of your friends after you left		
4 of desktop and notebook units that are sold to customers, how			4 Dell covers small and medium business?		
5 much market share Dell is gaining. Normally like if it had			5 A. I'm not sure if he covered. It may be that that friend		
6 15 percent market share last time so it may have more than			6 heard from somewhere that SMB is doing okay, that's all.		
7 that. So it's relative to the overall unit, overall units,			7 Q. But in addition to consumer and commercial you did also get		
8 entire pieces sold in U.S. consumer.			8 information from these friends about small and medium business,		
9 Q. And market share is an important metric if you're trying to			9 correct?		
10 figure out what Dell's revenue is, is that correct?			10 A. I did get it here -- I did get it here, so it seems like,		
11 A. Not exactly.			11 yeah.		
12 Q. Well, you also comment here "revenue growth is fine,"			12 Q. Now, you continued -- I'm sorry.		
13 right?			13 A. Just a thought. One thing, going back to your question		
14 A. Revenue growth for U.S. consumer is fine, yes.			14 when you mentioned that these segments make up all of Dell.		
15 Q. So that's information that you got specifically with			15 Need to -- because I'm reading this, the thing is, this is		
16 respect to Dell's revenue, is that right?			16 U.S., and I think U.S. is around 50 percent of Dell's business.		
17 A. This is for U.S. consumer and revenue growth is fine is			17 It's not hundred percent of Dell's business and rest of the		
18 also, like, it's a subjective thing. Fine could be in			18 business is overseas.		
19 different quarters no -- like 1 to 2 percent growth is fine,			19 Q. Okay. But in terms of the different product lines and		
20 sometimes that is not good. More than 10 percent, so it's a			20 types of customers --		
21 little bit subjective parameter.			21 A. Correct.		
22 Q. But this is, you got some subjective feedback from your			22 Q. We agree that commercial, consumer, small and medium		
23 friends at Dell, right?			23 business services, those are Dell's primary businesses and		
24 A. Correct, yes.			24 product lines, correct?		
25 Q. So they would give you commentary as to whether revenues			25 A. Correct. That's true.		
CBQFNEW3	Goyal - cross	Page 1496	CBQFNEW3	Goyal - cross	Page 1498
1 were fine or they were not fine, right?			1 Q. Now, these friends, and again I'm not talking about Rob		
2 A. Correct.			2 Ray, you were in touch with them in the year 2008, correct?		
3 Q. And then if you continue, it says, "Operating margins could			3 A. Yes.		
4 be," and then it says "plus VE." What does that mean?			4 Q. And you were in touch with them in the year 2009, correct?		
5 A. Positive.			5 A. I think I was, but again, it declined a lot after I started		
6 Q. "This QTR," what is "this QTR"?			6 getting Rob Ray information because I didn't really need that.		
7 A. Quarter.			7 Q. In 2008 you passed on information you received from these		
8 Q. "Versus being in red last QTR." What does that phrase			8 friends to Jesse Tortora, is that correct?		
9 mean?			9 A. Right.		
10 A. It means they were negative, they lost money last quarter.			10 Q. And in 2009 you continued to pass on information from these		
11 Q. And your friends were telling you that the margins could be			11 friends to Jesse Tortora, is that right?		
12 positive this quarter versus being negative last quarter, is			12 A. I may have. I don't remember. I may have.		
13 that right?			13 Q. I think you said you don't remember the specifics of many		
14 A. Right.			14 conversations you had about Dell, right? Strike that. Do you		
15 Q. And margins again either means gross margin or operating			15 have any reason to believe as you sit here now that you did not		
16 margin or both, right?			16 continue to pass on information from these friends to Jesse		
17 A. Here it's operating margin.			17 Tortora in the year 2009?		
18 Q. Right, it says operating margin. If you look now to the			18 A. What I said was the amount of information I got from these		
19 bottom, number 4, it says "SMB is just okay." What is SMB?			19 friends in 2009 I think it declined relative to 2008 before.		
20 A. Small and medium business.			20 Q. My question is --		
21 Q. Now, where did you get that information from?			21 A. But you're right, if I got it, I gave it to Jesse, correct.		
22 A. I think it's one of these friends. I'm not sure who.			22 Q. You mentioned you knew people in investor relations other		
23 Q. Was there a separate segment or separate division at Dell			23 than Rob Ray and you mentioned Shep Dunlap, is that correct?		
24 that covers small and medium business?			24 A. Correct.		
25 A. It kept changing. It used to be separate division when I			25 Q. Did you also know Rob Williams?		

CBQFNEW3	Goyal - cross	Page 1499	CBQFNEW3	Goyal - cross	Page 1501
1	A. Rob Williams he was director, I think at investor		1	relations department?	
2	relations.		2	A. I'm not sure of the frequency, but we would make visits to	
3	Q. Did you know him?		3	Dell and meet with IR.	
4	A. Personally know him? No.		4	Q. This was in Austin, Texas at the headquarters?	
5	Q. Did you ever speak to him?		5	A. Right.	
6	A. I might have at Prudential or at Neuberger.		6	Q. And you would go and meet with the investor relations	
7	Q. How about Lynne Tyson; did you speak to her?		7	department to ask them questions about Dell's business, right?	
8	A. I don't recall like speaking over the phone. I may have		8	A. Yes.	
9	once or twice at Neuberger, I think I met her once or twice in		9	Q. And you would ask them questions about trends in the	
10	a group lunch, but I don't know her personally.		10	current business, right?	
11	Q. Even if you don't remember the names, do you recall		11	A. There would be just questions about general business	
12	speaking to people in investor relations other than Shep Dunlap		12	conditions, sometimes clarifications about what happened in the	
13	and Rob Ray?		13	past, things that they reported, and most of the time people,	
14	A. Again, I might have spoken to a couple of the people you		14	generally people talk about its overall strategy, what is	
15	mentioned.		15	company doing, to have the long-term revenue and EPS quote,	
16	Q. Now, you understood that the function of investor relations		16	what are they doing, what are the structural changes they're	
17	at Dell was to speak to analysts, correct?		17	making.	
18	A. Yes.		18	Q. One of the topics you discussed with investor relations	
19	Q. And did you have an understanding as to what the function		19	when you visited them was gross margin trends, correct?	
20	of investor relations was specifically with respect to mutual		20	A. Overall gross margin is again one of the topics that people	
21	fund firms like Neuberger Berman?		21	are interested in, how are we going to improve gross margins.	
22	A. It was the same.		22	Q. And another topic that you discuss with investor relations	
23	Q. And what was that function? What was your understanding of		23	when you visited was operating expenses, right?	
24	what investor relations was supposed to do with respect to		24	A. Right. That is again a usual topic of conversation because	
25	firms like Neuberger Berman?		25	the lower the operating expense the higher your earnings.	
CBQFNEW3	Goyal - cross	Page 1500	CBQFNEW3	Goyal - cross	Page 1502
1	A. I don't know if there was anything special regarding mutual		1	Q. And you would also talk about revenue and market share,	
2	fund firms like Neuberger Berman. Their function was generally		2	correct?	
3	to give information to investors and especially analysts in		3	A. Right.	
4	terms of if we're asked questions and then they, you know, they		4	Q. And when you were at Neuberger Berman you also had	
5	provide access to company management, they take them on tours,		5	conversations with Dell IR, right?	
6	this and that.		6	A. Yes.	
7	Q. Was it your understanding that Dell investor relations was		7	Q. And while at Neuberger Berman your conversations with Dell	
8	especially interested in developing relationships with		8	IR covered the topic of gross margin, right?	
9	Neuberger Berman and other firms that might invest in Dell		9	A. Yes.	
10	stock?		10	Q. Operating expenses, right?	
11	A. Generally speaking most companies tend to like long-term		11	A. Right.	
12	investors like Neuberger Berman.		12	Q. And revenue, correct?	
13	Q. And did you have an understanding as to whether Dell		13	A. Correct.	
14	investor relations targeted Neuberger Berman as a potential		14	Q. I'd like you to look at what's been marked for	
15	investor in Dell stock?		15	identification as Government Exhibit 757. It's your tab 3.	
16	A. I'm not sure if they mention that we are one of the special		16	Government Exhibit 757. Is this an e-mail exchange between you	
17	targets. I don't think we held that much of Dell stock so I		17	and Mr. Tortora in April of 2009 concerning Dell investor	
18	won't be surprised if it was, but I don't know if it was.		18	relations and other topics?	
19	Q. Did you understand that Neuberger Berman was a priority for		19	A. Yes.	
20	Dell investor relations in terms of reaching out to potential		20	MR. FISHBEIN: Defense offers Exhibit 757.	
21	investors?		21	MR. TARLOWE: No objection.	
22	A. Again, I wouldn't be surprised it was, but I don't know		22	THE COURT: All right, 757 is received.	
23	specifically it was.		23	(Defendant's Exhibit 757 received in evidence)	
24	Q. Now, do you recall that when you were at Prudential you		24	Q. And if we look at the bottom, Mr. Goyal, that's an e-mail	
25	would make quarterly visits to Dell and visit with the investor		25	from Mr. Tortora to you, right?	

CBQFNEW3	Goyal - cross	Page 1503	CBQFNEW3	Goyal - cross	Page 1505
1 A. Yes, it is.			1 Q. So these were all things he was expecting you to report		
2 Q. April 13, 2009, correct?			2 back on after your meeting with Ms. Tyson, right?		
3 A. Correct.			3 A. Yes. Generally these are the questions people ask normally		
4 Q. And, by the way, when in Dell's quarterly reporting cycle			4 and that's what he wanted to ask, yes.		
5 is that? Approximately.			5 Q. Do you recall that you attended that group lunch with		
6 A. I think it's couple of weeks before their quarter ends,			6 Ms. Tyson?		
7 too.			7 A. I have some memory that I went to a group lunch.		
8 Q. Because the quarter typically ends towards the end of			8 Q. If you could look at Defense Exhibit 994, it's your tab 5.		
9 April, right?			9 Is this an e-mail you wrote on April 16 of 2009 reporting on		
10 A. Yes.			10 your lunch with Ms. Tyson?		
11 Q. And this is a couple of weeks before, is that right?			11 A. Right.		
12 A. Yes.			12 MR. FISHBEIN: Defense offers Exhibit 994.		
13 Q. And do you see on line 3 Mr. Tortora in his e-mail to you			13 MR. TARLOWE: No objection.		
14 says, "Lynne is on road in New York City with BMO on Thursday.			14 THE COURT: Defense Exhibit 994 is received.		
15 Let me know if you get an updated read on what the message will			15 (Defendant's Exhibit 994 received in evidence)		
16 be." Do you see that?			16 Q. This e-mail, Mr. Goyal, you report back to Mr. Tortora as		
17 A. Yes.			17 to what you heard from Ms. Tyson, right?		
18 Q. What did you understand him to be asking you for?			18 A. Yes.		
19 A. Basically what is she saying, generally, what is she just			19 Q. And again, this is about two weeks from the end of Dell's		
20 generally saying.			20 quarter, right?		
21 Q. So you were going to meet with Lynne Tyson of Dell investor			21 A. Correct.		
22 relations, right?			22 Q. And this relates to an in-person meeting you had with Lynne		
23 A. I think it was a group lunch.			23 Tyson, the head of investor relations, right?		
24 Q. A group lunch?			24 A. Yes, a group meeting.		
25 A. Right.			25 Q. Do you recall, what was the format? Did she have a		
CBQFNEW3	Goyal - cross	Page 1504	CBQFNEW3	Goyal - cross	Page 1506
1 Q. So that means a lunch with a number of analysts?			1 presentation or was it just question and answer?		
2 A. Right.			2 A. I think it was just question and answer.		
3 Q. And they get to ask questions of Ms. Tyson?			3 Q. Do you remember whether you asked any questions?		
4 A. Yes.			4 A. I do not.		
5 Q. So he asked you to report what you heard, right?			5 Q. If you look at your writeup here, do you see there's a		
6 A. Right.			6 section called demand?		
7 Q. And then in the next e-mail up the one from you back to			7 A. Yes.		
8 him, the last line you say, "Going to Lynne meeting and will			8 Q. Do you see that you learned various information about		
9 update you on their message. Let me know if there is anything			9 Dell's, how Dell was doing in different geographies, do you see		
10 specific you want to ask apart from quarter trends." Do you			10 that?		
11 see that?			11 A. There is some geographic information. Europe continues to		
12 A. Yes.			12 be bad, China, yes.		
13 Q. So you asked him if there was anything in particular he			13 Q. So there's information about how Dell is doing from a		
14 wanted to know, is that right?			14 revenue basis in different geographies, right?		
15 A. Yes.			15 A. I'm not sure whether it is like this is what the Dell		
16 Q. And then you answer, he answered at the very top, "Key			16 revenues, it is a general comment about overall demand, that		
17 items demand, GM, OPEX, cash flow, handset market, etc." Do			17 general economic condition everywhere in these segments.		
18 you see that?			18 Q. And you understood that to relate to the current quarter,		
19 A. Yes.			19 the quarter that was going to end in April of 2009, right?		
20 Q. Did you understand demand to refer to revenue?			20 A. It was what the condition they were saying around that		
21 A. Demand is related to revenues.			21 time, it's what you're seeing in the market right now, so		
22 Q. And GM you understood to be gross margin?			22 that's what the comment was.		
23 A. Right.			23 Q. Currently?		
24 Q. And OPEX is operating expense, right?			24 A. Currently, yes.		
25 A. Right.			25 Q. Then you see under cost cuts, do you see that?		

CBQFNEW3	Goyal - cross	Page 1507	CBQFNEW3	Goyal - cross	Page 1509
1 A. Yes.			1 talking about, is that correct?		
2 Q. There is a sentence, and I'll read it, quote, "Implied that			2 A. Yes.		
3 normalized GM is near 18 percent levels, and should not go down			3 Q. And when they release the results in the conference call		
4 much as demand stabilizes," end quote. Do you see that?			4 they often say what the non-gross margin is, is that right?		
5 A. I do.			5 A. Yes.		
6 Q. And what does that mean?			6 Q. If you look at page 2 of 15 under the comments of		
7 A. So what it means is gross margin is highly dependent on			7 Mr. Gladden?		
8 sales and sales fluctuate based upon seasonality or time of the			8 A. Yes.		
9 year, and the sales mix. For example, in November-December is			9 Q. And do you see there's a paragraph, so let's take a look,		
10 when U.S., generally consumers buy a lot due to the holiday			10 and then I'll read the last sentence. "Gross margin was		
11 season but the products -- so higher revenues, but the products			11 17.6 percent for the quarter and, excluding the impact of the		
12 sold are sometimes low margin products, so that has negative			12 current organizational effectiveness cost was 18.1 percent."		
13 impact. And other times of the year when corporates buy more,			13 Do you see that?		
14 so there's a seasonality involved. Normally gross margin means			14 A. I do.		
15 if you take out the seasonality over the year out and think			15 Q. And so do you understand that Dell's non-GAAP gross margin		
16 that there were many fluctuations then like what would be			16 was 18.1 percent that quarter as reported?		
17 average level of gross margins.			17 A. Yes.		
18 Q. And so this was a topic that was discussed with Ms. Tyson,			18 Q. And so the information that Ms. Tyson gave you two weeks		
19 right?			19 before the quarter ended was quite accurate, wasn't it?		
20 A. Seems like that, yes.			20 A. The information -- from that thing, the way I'll take it,		
21 Q. And people asked questions about how gross margin was			21 it was, the comment about normalized GM, which is not for the		
22 doing, correct?			22 current quarter but that 18 percent number is close to this		
23 A. It says what will be normalized gross, but I don't know if			23 18.1 percent number.		
24 somebody asked that how gross margin was doing.			24 Q. It's close, right?		
25 Q. But this is a subject that came up, right?			25 A. Yes.		
CBQFNEW3	Goyal - cross	Page 1508	CBQFNEW3	Goyal - cross	Page 1510
1 A. Yes, normalized gross margin.			1 Q. Now, you understood that Ms. Tyson was authorized to		
2 Q. And Ms. Tyson commented on it?			2 provide this information, right?		
3 A. Looks like she did, yes.			3 A. Which one?		
4 Q. And you concluded that normalized GM would be near			4 Q. Ms. Tyson.		
5 18 percent, right?			5 A. Correct.		
6 A. Yes.			6 Q. When you had the lunch with Ms. Tyson, she was authorized		
7 Q. Now, is that a GAAP number or non-GAAP number?			7 to give you that information, right?		
8 A. Normally people take it to be non-GAAP number.			8 A. That's my understanding.		
9 Q. Right, so that would be a discussion of Dell's gross margin			9 Q. Did you speak to Mr. Dunlap about Dell's business trends		
10 before non-recurring or exceptional items, right?			10 after you were at Neuberger Berman?		
11 A. Correct.			11 A. Yes.		
12 Q. Now, do you recall when Dell actually reported its gross			12 Q. And, again, Mr. Dunlap is in the investor relations		
13 margin for this quarter, what it was on a non-GAAP basis?			13 department, right?		
14 A. No.			14 A. Correct.		
15 Q. If you could look at Defense Exhibit 1228, it's your tab 6.			15 Q. And did you speak to him about gross margins at times?		
16 Do you recognize that document?			16 A. So, again, when we talk investor relations we talk on		
17 A. This is a transcript of the quarterly earnings call.			17 various topics and gross margin does come up in those things,		
18 Q. And is it the quarterly earnings call for the quarter ended			18 so I don't exactly remember talking to him margins, but I		
19 in April 2009?			19 wouldn't be surprised if I did.		
20 A. Yes.			20 Q. And how about revenue? Did you talk to Mr. Dunlap about		
21 MR. FISHBEIN: Defense offers Defense Exhibit 1228.			21 revenue?		
22 THE COURT: No objection? Defense 1228 is received.			22 A. General, overall, yes. General topics were revenue.		
23 (Defendant's Exhibit 1228 received in evidence)			23 Q. And operating expenses as well, right?		
24 Q. And so, Mr. Goyal, you understand this is a transcript of			24 A. Yes.		
25 when Dell actually released the results for the quarter we're			25 Q. And then what about Mr. Williams, do you recall speaking to		

CBQFNEW3	Goyal - cross	Page 1511	CBQFNEW3	Goyal - cross	Page 1513
1	Mr. Williams, Rob Williams?		1	Q. That's correct?	
2	A. I do not.		2	A. Correct.	
3	Q. Did you ever -- you said that you kept a Dell model, right?		3	Q. You said that what Mr. Ray was interested in was how to	
4	A. I did.		4	move into investment management, is that right?	
5	Q. And did you ever in your conversations with the investor		5	A. Correct.	
6	relations department say to them my model is showing X, you		6	Q. He did not, I take it, want to keep working in a company,	
7	see, do you think that's right or am I far off? Did you ever		7	he wanted to be in a different role in investment management,	
8	have a conversation like that?		8	is that right?	
9	A. I don't recall the conversation with Dell IR about that.		9	A. I'm sorry, I didn't get it.	
10	Q. Do you recall speaking to any investor relations department		10	Q. In other words, he wanted to move away from working for a	
11	at any company about your model and whether you were doing it		11	corporation and instead work for investment management, is that	
12	correctly?		12	right?	
13	A. These, I wouldn't be surprised if I did that a lot		13	A. True.	
14	sometimes. When you are initially launching on a company, for		14	Q. Now, in the end he did not go into investment management,	
15	example, you haven't done any work on that company and you		15	right?	
16	start working on that, sometimes they would say, you build a		16	A. Right.	
17	model and say am I generally right, am I too far off and they		17	Q. So whatever assistance you gave him, it did not actually	
18	basically give some kind of indication that based on where the		18	result in him going into investment management, is that right?	
19	rest of the Street is, you know, and generally this seems to be		19	A. Yes.	
20	too high or too low and this is about in the ballpark, so it's		20	Q. Neuberger Berman is an investment management firm, right?	
21	in relation to generally this makes sense or doesn't make sense		21	A. Yes.	
22	at all.		22	Q. But did I understand you correctly, you did not arrange for	
23	Q. And just to be clear, that's a conversation that you would		23	Mr. Ray to interview, for example, with your boss, Mr. Abbasi,	
24	have with an investor relations department?		24	right?	
25	A. It's not very frequent, but sometimes yes, I could.		25	A. Right.	
CBQFNEW3	Goyal - cross	Page 1512	CBQFNEW3	Goyal - cross	Page 1514
1	Q. And they would comment on your model in the way that you've		1	Q. So he never interviewed with your group at Neuberger	
2	just discussed, is that right?		2	Berman, is that right?	
3	A. Sometimes they would, sometimes they would say no comment.		3	A. Correct.	
4	Q. Now, with respect to Rob Ray, let's turn now to Rob Ray,		4	Q. And you were never able to find him a job at Neuberger	
5	okay?		5	Berman, right?	
6	A. Okay.		6	A. Right.	
7	Q. You never paid any money to Rob Ray, is that correct?		7	Q. I believe you said you started speaking to him about his	
8	A. Correct.		8	career in 2006, is that right?	
9	Q. You gave him various career advice, I think you said, is		9	A. About the time I left there.	
10	that right?		10	Q. I'm sorry?	
11	A. Right.		11	A. Yes, about the time I left there, so 2000 -- maybe 2006.	
12	Q. And you said that you socialized with him I think at least		12	Q. And that's a year or two years before he started giving you	
13	one occasion, is that right?		13	information, right?	
14	A. Correct.		14	A. That's about, yeah, one, one and a half years before.	
15	Q. Now, when you socialized with him, that was after he left		15	Q. Now, in your conversations with him, did he ever connect	
16	Dell, right?		16	the career advice with the information he was giving you? In	
17	A. Correct.		17	other words, did he ever say something like I'll give you this	
18	Q. And you were both living in New York City?		18	information, but only if you give me career advice?	
19	A. No, I was living in New Jersey, he was living somewhere		19	MR. TARLOWE: Objection.	
20	there, but in the area.		20	THE COURT: Overruled. Did he ever say anything like	
21	Q. In the area.		21	that?	
22	A. Yes.		22	A. No.	
23	Q. So while he was at Dell you did not socialize with him, is		23	THE COURT: No. Okay.	
24	that correct?		24	Q. The answer was?	
25	A. Yes.		25	A. He didn't say that.	

CBQFNEW3	Goyal - cross	Page 1515	CBQFNEW3	Goyal - cross	Page 1517
1	Q. And in 2006 you were giving him this career advice just as		1	don't recall that kind of thing.	
2	an accommodation to somebody you knew, right?		2	Q. But is it correct that the way you got information from him	
3	A. Correct.		3	is that you told him you were working on a model and you wanted	
4	Q. And you would have continued to give him career advice		4	to check the accuracy of the model?	
5	whether or not he gave you information about Dell, isn't that		5	A. That's what I initially told him, that's why I'm asking him	
6	correct?		6	information, yes.	
7	A. I would have not showed how much detail, the frequency and		7	Q. Now, you mentioned that you got certain ranges of numbers	
8	the length of the conversation that I had, but generally		8	from him, is that right?	
9	speaking, I would have given him some kind of advice.		9	A. Right.	
10	Q. Because the things that you talked about, passing a resume		10	Q. But as you sit here today you can't remember what those	
11	on or generally talking about how the industry works, those are		11	ranges were in any particular quarter, right?	
12	things you did for a lot of contacts you have, right?		12	A. No.	
13	A. At Dell? It was like very, very detailed for him and I		13	Q. So, for example, you said they could have been broader or	
14	spent a lot of time, so -- I haven't done that with anybody		14	narrower, but you can't tell me for any particular quarter	
15	else.		15	whether it was a broad range or a more narrow range, correct?	
16	Q. So I understand that the detail and the amount of time		16	A. They varied. They varied quarter to quarter.	
17	you're saying was special with him.		17	Q. And in some cases I think you said the range was as broad	
18	A. Right.		18	as, for example, for gross margin, 17 percent to 17.5 percent,	
19	Q. But my question is, isn't that the type of advice or		19	is that right?	
20	comments that you would give to many of your contacts in the		20	A. That's what I think it might have been, yeah.	
21	industry?		21	Q. You testified on direct about payments that you got from	
22	MR. TARLOWE: Objection. Asked and answered.		22	Diamondback. Do you recall that?	
23	THE COURT: You can answer. Go ahead. Overruled.		23	A. Yes.	
24	A. Yes.		24	Q. Now, this arrangement where you got paid by Diamondback,	
25	Q. Now, would it be fair to say that these conversations you		25	you discussed that with Jesse Tortora, right?	
CBQFNEW3	Goyal - cross	Page 1516	CBQFNEW3	Goyal - cross	Page 1518
1	had with Rob Ray were casual in nature?		1	A. Right.	
2	A. Meaning?		2	Q. In fact the only person at Diamondback that you spoke to	
3	Q. Meaning that did you press him for information or did you		3	about that was Jesse Tortora, correct?	
4	rather sort of accept what he gave you?		4	A. Yes.	
5	A. I didn't press. I didn't press.		5	Q. So you never spoke to Todd Newman about that, right?	
6	Q. And in fact, you told him that you were in the research		6	A. No.	
7	department of Neuberger Berman, right?		7	Q. Now, you mentioned on direct right at the beginning that	
8	A. Yes, I did.		8	you had met Mr. Newman once, I think you said, is that right?	
9	Q. So he understood that you were doing research including		9	A. Yes.	
10	working on models, right?		10	Q. What were the circumstances of that?	
11	A. Yes.		11	A. I think it was a lunch even, I'm not sure if it was	
12	Q. And you told him in these conversations that you had a Dell		12	sponsored by a company or sell side, there was a luncheon	
13	model, didn't you?		13	event. I went to the lunch and I think Jesse and Todd were	
14	A. I don't remember telling him that I had that model, but I		14	there so he sort of introduced me.	
15	think it would be understood that I have that.		15	Q. So he just introduced you and you said hello, right?	
16	Q. And didn't you tell him, didn't you tell Rob Ray that you		16	A. Yes.	
17	wanted to check your model and make sure it wasn't too far off?		17	Q. Do you recall any conversation of substance that you had	
18	A. You're true. You're right, yes.		18	with Todd Newman?	
19	Q. That's what you told him, right?		19	A. No.	
20	A. Yes.		20	Q. Do you recall whether your wife Ruchi has met Todd Newman?	
21	Q. And that he would react to that, right?		21	A. She hasn't.	
22	A. Um --		22	Q. Has not, correct?	
23	Q. In other words, he would respond to that by saying whether		23	A. No.	
24	you were far off or not?		24	Q. Do you recall, Mr. Goyal, that you first discussed this	
25	A. I don't recall that, saying I'm this or am I far off. I		25	arrangement with Jesse Tortora when you moved to Neuberger	

CBQFNEW3	Goyal - cross	Page 1519	CBQMNEW4	Goyal - cross	Page 1521
1 Berman?			1 Q. But this was before you had started to get information from		
2 A. Right.			2 Rob Ray, is that right?		
3 Q. So when you first discussed it with Mr. Tortora, was he			3 A. That's what I think, yes.		
4 still at Prudential?			4 Q. Now, if we could look at Government Exhibit 709A. That's		
5 A. I think he was at Diamondback.			5 one of the documents that you were shown on direct. I'm sorry.		
6 Q. But it was early in your time at Neuberger Berman, wasn't			6 775A. I'm sorry this is in evidence. It's not in your binder.		
7 it?			7 I think you said this was an invoice that you had		
8 A. So we're talking about like late 2007. So I joined there			8 created with respect to these payments from Diamondback, is		
9 in July, so yeah, that's the time period you're talking about.			9 that right?		
10 So I was two, three, four months into Neuberger Berman.			10 A. Correct.		
11 Q. Do you remember exactly when it was that Mr. Tortora raised			11 Q. And if you look, the period that you put there was October		
12 this with you?			12 9, 2007 to December 31, 2007.		
13 A. Can you please repeat that?			13 You see that?		
14 Q. Yes. Do you remember exactly when it was that Mr. Tortora			14 A. Yes.		
15 first raised the issue of your getting paid?			15 Q. And would I be correct, Mr. Goyal, that whatever		
16 A. My recollection is somewhere, somewhere around October of			16 conversation you had with Mr. Tortora was certainly before		
17 2007.			17 October 9, right?		
18 Q. Could it have been before that?			18 A. No.		
19 A. It may have been September. I don't think it's before			19 Q. Well, you put October 9 as the start date, right?		
20 that.			20 A. I put -- that's when he must have mentioned, put the last		
21 Q. Do you recall that when Mr. Tortora raised the issue, what			21 quarter, October to December. Even if we had this conversation		
22 he said he wanted you to do was the same kind of work you had			22 in October, it would still be -- I would still done that, put		
23 been doing for him at Prudential. Do you remember that?			23 October 9.		
24 A. Yeah.			24 Q. Mr. Goyal, if you could look, you have a binder in front of		
25 Q. So the arrangement was for you to continue doing the type			25 you that's called 3500. It's a separate binder. If you could		
CBQFNEW3	Goyal - cross	Page 1520	CBQMNEW4	Goyal - cross	Page 1522
1 of work that you had done for him at Prudential, right?			1 look at 3507-6. It should be tab 6 in your binder.		
2 A. In terms that when I was like full employ of Prudential I			2 Do you have that document?		
3 was doing almost all the work. I think it meant the kind of			3 A. Yes.		
4 the Dell information I was providing him at Prudential.			4 Q. And I am going to ask you to read a portion of it to		
5 (Continued next page)			5 yourself, okay?		
6			6 A. Okay.		
7			7 Q. If you could turn to page 3. And we are looking at the		
8			8 second full paragraph that starts CHS?		
9			9 A. Okay.		
10			10 Q. I am going to direct your attention to the second sentence		
11 which I'd like you to just read to yourself.			11 which I'd like you to just read to yourself.		
12 A. Second line?			12 A. Second line?		
13 Q. Second sentence that starts, when CHS.			13 Q. Second sentence that starts, when CHS.		
14 A. When CHS --			14 A. When CHS --		
15 Q. Don't read it out loud. Just read it to yourself.			15 Q. Don't read it out loud. Just read it to yourself.		
16 A. Just that sentence?			16 A. Just that sentence?		
17 Q. Yes.			17 Q. Yes.		
18 Mr. Goyal, does that refresh your memory that you			18 Mr. Goyal, does that refresh your memory that you		
19 first spoke to Mr. Tortora about being paid shortly after you			19 first spoke to Mr. Tortora about being paid shortly after you		
20 joined Neuberger Berman?			20 joined Neuberger Berman?		
21 A. It doesn't.			21 A. It doesn't.		
22 Q. It does not?			22 Q. It does not?		
23 A. It does not.			23 A. It does not.		
24 Q. As I understand your testimony, you don't remember the			24 Q. As I understand your testimony, you don't remember the		
25 precise time when he first raised that, is that right?			25 precise time when he first raised that, is that right?		

CBQMNEW4	Goyal - cross	Page 1523	CBQMNEW4	Goyal - cross	Page 1525
1	A. My best recollection is in October.		1	is essential to the success of our team."	
2	Q. Now, at the time that you entered, that you made this		2	Do you see that?	
3	arrangement with Mr. Tortora, you understood, as we discussed		3	A. Yes.	
4	before, that it was to compensate you for doing the same type		4	Q. Did you understand contact network to include these friends	
5	of work you had done at Prudential, right?		5	that you had at Dell?	
6	A. Which I understood like Dell checks.		6	A. Yes.	
7	Q. So that would include information that you got from these		7	Q. And Mr. Tortora and you made no effort to hide the fact	
8	friends of yours, right?		8	that you still had contacts at Dell, right?	
9	A. Correct.		9	A. It would indicate that, yes.	
10	Q. And not Mr. Ray, because you hadn't started getting		10	Q. In other words, that was something that was freely	
11	information from Mr. Ray yet?		11	discussed in your review, right?	
12	A. True.		12	A. It was -- I didn't know -- I didn't get to see my review.	
13	Q. Did it also true work on financial modeling like you had		13	Q. That actually helps me.	
14	done for Mr. Tortora?		14	In the next paragraph he refers to you as a financial	
15	A. It wouldn't include that much detail because that was		15	wizard and master modeler.	
16	really a full-time job I was doing at Prudential. That's why I		16	Do you see that?	
17	was spending all the time doing that. But in case he needed		17	A. Yes.	
18	some help I would do it.		18	Q. Were those ever phrases he used with you?	
19	Q. You had done modeling work for him at Prudential, right?		19	A. Excuse me?	
20	A. Right.		20	Q. Were those phrases that he ever used in conversation with	
21	Q. And you understood that if he was going to pay you to		21	you?	
22	continue doing the same type of work, that can include		22	A. I don't recall that.	
23	modeling, right?		23	Q. But you do recall that he thought very highly of your	
24	A. If he asked for help, you know, sometimes. I don't know if		24	modeling work?	
25	it was specifically said, but if he were to ask me for help, I		25	A. Yes.	
CBQMNEW4	Goyal - cross	Page 1524	CBQMNEW4	Goyal - cross	Page 1526
1	would provide some help.		1	Q. You said a minute ago that from time to time he would ask	
2	Q. Mr. Tortora thought very highly of your modeling abilities,		2	you questions or ask for your help in various modeling issues	
3	didn't he?		3	when he was at Diamondback and you were at Neuberger Berman, is	
4	A. Yes.		4	that right?	
5	Q. And if you'll turn with me to Defense Exhibit 9805. It's		5	A. Sometimes, yes, he did.	
6	already in evidence. It's your tab 7.		6	Q. What kind of help did he ask you for?	
7	Mr. Goyal, do you recognize this as a performance		7	A. There were times like he will seek what kind of number like	
8	review that Mr. Tortora gave you while you were at Prudential?		8	for Apple model, what kind of estimate you have for iPhone	
9	A. Which tab you mentioned?		9	sales or something, what your overall estimate for PC market,	
10	Q. It's tab 7.		10	these kind of things.	
11	A. Of 3507?		11	Q. If you will look with me at Defense Exhibit 8627, it's your	
12	Q. I'm sorry. It's in the first binder. Let me know when		12	tab 8.	
13	you've got that.		13	Do you have that?	
14	A. Okay.		14	A. Yes.	
15	Q. Do you recognize this as a performance review that		15	Q. Is that an example of the type of assistance he requested	
16	Mr. Tortora gave you when you were at Prudential?		16	on the Apple model?	
17	A. Yes.		17	A. Yes.	
18	Q. And if you look at page 3 of 7, the page numbers are on the		18	MR. FISHBEIN: Defense offers Exhibit 8627.	
19	bottom right.		19	MR. TARLOWE: No objection.	
20	A. Okay.		20	THE COURT: Defense 8627 is received.	
21	Q. Are you with me?		21	(Defendant's Exhibit 8627 received in evidence)	
22	A. Yes.		22	Q. If you will look at Defense Exhibit 8661, it's your tab 9.	
23	Q. If you look at the first full paragraph, the last sentence		23	Do you see that?	
24	says: "Sandy's industry knowledge, contact, network,		24	A. Yes.	
25	creativity and commitment are just some of the reasons why he		25	Q. Is that another example of assistance that Mr. Tortora	

<p>CBQMNEW4 Goyal - cross Page 1527</p> <p>1 requested of you when he was at Diamondback and you were at 2 Neuberger Berman? 3 A. Yes. 4 MR. FISHBEIN: Defense offers Exhibit 8661. 5 MR. TARLOWE: No objection. 6 THE COURT: Defendant's 8661 is received. 7 (Defendant's Exhibit 8661 received in evidence) 8 Q. What does this relate to, Mr. Goyal? 9 A. This relates to Apple. 10 Q. What type of information are you providing him on Apple? 11 A. He is asking for iPod revenue growth for quarter and next 12 quarter in both sequential and year over year terms. 13 Q. And this was information that you had as part of your work 14 at Neuberger Berman, right? 15 A. Correct. 16 Q. And you understood that for whatever reason he did not have 17 it at Diamondback, right? 18 A. Correct. 19 Q. So he wanted your help and he asked you for it, right? 20 A. Yes. 21 Q. And you gave it to him, right? 22 A. Yes. 23 Q. And there were other examples like this where you gave him 24 help in modeling and financial analysis at Apple, right? 25 A. That might happen, yes.</p>	<p>CBQMNEW4 Goyal - cross Page 1529</p> <p>1 Q. You understood that for whatever reason he did not have 2 access to this at Diamondback, is that right? 3 A. Correct. 4 Q. So he wanted you to do it for him? 5 A. Right. 6 Q. That's the type of work that you would have done for him at 7 Prudential, right? 8 A. I'm not sure. I think we had this at Prudential, also, 9 yes. 10 Q. But at Prudential if he wanted forward PE ratios, he would 11 say, Sandy, why don't you try to go get this for me? 12 A. Correct. 13 Q. Now when he was at Diamondback, he wanted to keep doing 14 that for you? 15 A. Yes, he asked me to do it. 16 Q. If you could look at Defense Exhibit 8883. It's your tab 17 11. 18 Does this relate to more assistance that he requested 19 of you while he was at Diamondback and you were at Neuberger 20 Berman? 21 A. Yes. 22 MR. FISHBEIN: Defense offers Exhibit 8883, Defense 23 Exhibit 8883. 24 MR. TARLOWE: No objection. 25 THE COURT: Defendant's 8883 is received.</p>
<p>CBQMNEW4 Goyal - cross Page 1528</p> <p>1 Q. Now, if you can turn to Defense Exhibit 8822. It's your 2 tab 10. 3 A. Yes. 4 Q. Is that another e-mail in which Mr. Tortora asks for your 5 help while he's at Diamondback and you're at Neuberger Berman? 6 A. Yes. 7 MR. FISHBEIN: Defense offers Exhibit 8822. 8 MR. TARLOWE: No objection. 9 THE COURT: Defense's 8822 is received. 10 (Defendant's Exhibit 8822 received in evidence) 11 Q. What does this refer to, Mr. Goyal? 12 A. He asked me to make a list of forward PE ratios for -- 13 Q. What is a forward PE ratio? 14 A. It's price to earnings ratio. 15 Q. Is that a type of financial analysis that you used to value 16 companies? 17 A. It's not exactly an analysis. It's basically a number that 18 we use to get from third-party resources like FactSet. 19 Q. He asked for that information with respect to a long list 20 or a list of companies that is in this e-mail, correct? 21 A. Correct. 22 Q. If we look at the next page, the list goes on, correct? 23 A. Correct. 24 Q. Did you provide him this information? 25 A. I think I did.</p>	<p>CBQMNEW4 Goyal - cross Page 1530</p> <p>1 (Defendant's Exhibit 8883 received in evidence) 2 Q. Mr. Goyal, does this one relate to Apple? 3 A. Yes. 4 Q. Yes, assistance with doing a model at Apple, right? 5 A. Seemed like. I don't know what he asked me to run through, 6 but it was something in the model. 7 Q. If we can go now to Defense Exhibit 9025. It's your tab 8 12. 9 Does this also relate to assistance that Mr. Tortora 10 requested of you when he was at Diamondback and you were at 11 Neuberger Berman? 12 A. Yes. 13 MR. FISHBEIN: Defense offers Exhibit 9025. 14 MR. TARLOWE: No objection. 15 THE COURT: Defendant's 9025 is received. 16 (Defendant's Exhibit 9025 received in evidence) 17 Q. What does this refer to, Mr. Goyal? 18 A. This refers to unit, which is PC unit, growth for Dell and 19 HP, and market share. 20 Q. Do you see there is a reference to IDC Gartner? 21 A. Yes. 22 Q. That's a third-party service that reports on unit sales, 23 correct? 24 A. Correct. 25 Q. Is one of the things that he asked you to help him with was</p>

CBQMNEW4	Goyal - cross	Page 1531	CBQMNEW4	Goyal - cross	Page 1533
1	to obtain and to analyze the IDC and Gartner data?		1	Do you see that?	
2	A. It doesn't look like that I'm analyzing IDC or Gartner. I		2	A. Yes.	
3	think it's numbers my expectation before it came.		3	Q. What does that mean?	
4	Q. So, in other words, you understood that he was asking you		4	A. It means all of this data may not have fit one file or	
5	for your assessment of what the IDC and Gartner numbers might		5	maybe it wasn't processed. Either one of those two were ours.	
6	look like when they came out, is that right?		6	Q. It was a lot of data that he requested from you?	
7	A. I think -- he was asking for my expectations for PC unit		7	A. Seems like that, yes.	
8	growth, correct.		8	Q. Did you notice that when you sent him this, you just sent	
9	Q. Is that something that you used to model?		9	it just to him, right?	
10	A. I have modeled, yes.		10	A. Yes.	
11	Q. Did you understand he was asking you for information that		11	Q. And in the other e-mails we just looked at you sent the	
12	you had in your model?		12	information just to Jesse Tortora, right?	
13	A. Right.		13	A. Correct.	
14	Q. And do you think that you gave this to him?		14	Q. Did he ever tell you he did not want other people at	
15	A. Yes.		15	Diamondback to know that you were giving him this type of	
16	Q. Do you see that he also asked you to send the actual IDC		16	assistance?	
17	and Gartner reports when they came out later that evening?		17	A. I don't think so.	
18	A. Yes.		18	Q. But you understood that he was an analyst at Diamondback,	
19	Q. Now, that's a subscription service, right?		19	right?	
20	A. Correct.		20	A. Correct.	
21	Q. And you pay for that, right?		21	Q. And when you were at Prudential, you were an analyst,	
22	A. I think Neuberger Berman did, yes.		22	right?	
23	Q. You understood that Mr. Tortora, for whatever reason, did		23	A. Yeah.	
24	not have access to that at Diamondback, is that right?		24	Q. And you used to do this type of work for Mr. Tortora when	
25	A. Correct.		25	you were at Prudential, right?	
CBQMNEW4	Goyal - cross	Page 1532	CBQMNEW4	Goyal - cross	Page 1534
1	Q. But Neuberger Berman did pay for a subscription to IDC		1	A. Right.	
2	Gartner, right?		2	Q. And you understood that one of his job responsibilities at	
3	A. Yes.		3	Diamondback was to do this type of work, right?	
4	Q. He asked you to get that data for him, right?		4	A. I wasn't sure what exactly. I know he was like an analyst	
5	A. Actually, I think it's just a report. I think this report		5	at hedge fund. I don't think I asked him, what are his typical	
6	was also publicly available. For some reason he asked me to		6	day-to-day duties or he talked about that. He talked about	
7	send it whenever it comes out because they send an e-mail to		7	mostly having stock recommendations.	
8	people.		8	Q. But you understood that there is various type of assistance	
9	Q. They send an e-mail to people who subscribe?		9	you were giving him were to assist him in doing his job at	
10	A. I think so, yes.		10	Diamondback, right?	
11	Q. If you could look at Defense Exhibit 9142. It's your tab		11	A. Correct.	
12	13.		12	Q. Now, do you recall that you actually sent him some of the	
13	Does this also relate to assistance that Mr. Tortora		13	models that you maintained at Neuberger Berman?	
14	requested of you when he was at Diamondback?		14	A. I might have, yes. I don't particularly remember, but I	
15	A. This seems like they are price to earnings ratio.		15	think I did.	
16	MR. FISHBEIN: Defense offers Exhibit 9142.		16	Q. Why don't we look at Defense Exhibit 8656, which is your	
17	MR. TARLOWE: No objection.		17	tab 15.	
18	THE COURT: Defense Exhibit 9142 is received.		18	A. Tab 16?	
19	(Defendant's Exhibit 9142 received in evidence)		19	Q. 15.	
20	Q. And you said, Mr. Goyal, that this, like one of the past		20	Is that an e-mail from you -- actually from one e-mail	
21	ones, refers to price earnings ratios on various companies,		21	address of yours to another on January 15, 2008?	
22	right?		22	A. Correct.	
23	A. Yes.		23	MR. FISHBEIN: Defense offers Exhibit 8656.	
24	Q. Do you see that you sent him the information and you made		24	MR. TARLOWE: No objection.	
25	the comment, pretty big file, will send rest tomorrow.		25	THE COURT: Defense 8656 is received.	

CBQMNEW4	Goyal - cross	Page 1535	CBQMNEW4	Goyal - cross	Page 1537
1	(Defendant's Exhibit 8656 received in evidence)		1	I would have done for this reason.	
2	Q. If we look at screen, Mr. Goyal, you sent an e-mail to		2	Q. Now, you understood that these models that you kept at	
3	yourself, is that right?		3	Neuberger Berman were the property of Neuberger Berman, right?	
4	A. Yes.		4	A. Yes.	
5	Q. On January 15, 2008?		5	Q. And you understood that these models were not supposed to	
6	A. Correct.		6	be shared with people at other firms, right?	
7	Q. And do you see that the attachments say Dell model NB XLS		7	A. Yes.	
8	and HP NB model XLS.		8	Q. And so when you sent it to Jesse Tortora you did it in a	
9	Do you see that?		9	way where it wouldn't appear in Neuberger Berman's e-mail	
10	A. Yes.		10	system that you were sending it to Mr. Tortora, right?	
11	Q. What does that mean?		11	A. Just looking at the other exhibits where I was sending some	
12	A. Dell and HP models.		12	files to him, so I was sending those files directly to him. So	
13	Q. And the NB, what does that stand for?		13	I don't know which way I was thinking on that.	
14	A. We just use for files, Neuberger Berman.		14	Q. Isn't it a fact that with respect to these models you were	
15	Q. These were models that you maintained while you were at		15	concerned about people at Neuberger Berman knowing that you	
16	Neuberger Berman, right?		16	shared those models with Jesse Tortora?	
17	A. Yes.		17	A. I might have. I might have.	
18	Q. The first e-mail, the e-mail from which you sent these		18	Q. Isn't that why you sent it from your personal address to	
19	models, Sandy.Goyal@NB.com, what e-mail address was that?		19	his personal address?	
20	A. That's my Neuberger Berman e-mail address.		20	A. I might have. I'm thinking, I sent other files directly to	
21	Q. And the address where you sent it to was		21	him. If I was thinking like that, that's what I'm saying. I	
22	Goyal_Sandy@Yahoo.com, what e-mail address is that?		22	am not sure.	
23	A. That's my personal e-mail address.		23	Q. These models, the Dell and the HP models that were attached	
24	Q. Why did you send these models from your work e-mail to your		24	to this e-mail, those are these bottoms-up models that you	
25	personal e-mail on January 15, 2008?		25	talked about, right?	
CBQMNEW4	Goyal - cross	Page 1536	CBQMNEW4	Goyal - cross	Page 1538
1	A. That's what I used if I have to use my model at work or		1	A. Yes.	
2	something. Normally, at Neuberger Berman, there is no other		2	Q. These were models that you worked on for several years,	
3	way of sending the models. So the only way for us to get the		3	right?	
4	models is to send it out through personal e-mail.		4	A. Yeah. One, two years, yes.	
5	Q. If you could look at what's already been admitted in		5	Q. With each quarter that those companies were reported, you	
6	evidence as Defense Exhibit 8657. It's your tab 16.		6	would refine the model and the various assumptions and formulas	
7	Do you see that?		7	in the model, right?	
8	A. Yes.		8	A. Right.	
9	Q. And does this reflect that on the same date, January 15,		9	Q. These models represented several years of your work	
10	2008, you sent these same models to Jesse Tortora?		10	product, right?	
11	A. Yes.		11	A. Since I started building these models.	
12	Q. And if you'll look at 8656, that's at 4:01 p.m., right?		12	Q. By the way, if you look at 8657, your tab 16.	
13	A. Okay. Yes.		13	A. Okay.	
14	Q. You sent it on to Jesse Tortora at 7:47 p.m. the same day,		14	Q. At the bottom Mr. Tortora says: Hey, Sandy, can you send	
15	right?		15	me Apple model? Thanks.	
16	A. Yes.		16	Do you see that?	
17	Q. And what e-mail address did you use for Mr. Tortora?		17	A. Yes.	
18	A. Jesse Tortora@Gmail.com.		18	Q. Do you also think you shared your Apple model with	
19	Q. Is that his personal address or his business address, to		19	Mr. Tortora?	
20	your understanding?		20	A. I think I did.	
21	A. I think it's a personal address.		21	Q. The Dell model, the HP model, the Apple model, they	
22	Q. In looking at this, do you recall now that the reason you		22	represent valuable work product at Neuberger Berman, right?	
23	sent it to your own personal e-mail address is that you wanted		23	A. Most everybody has these models, so I guess so.	
24	to forward it to Mr. Tortora later that evening?		24	Q. He wanted your model, right?	
25	A. I don't recall this particular, but it does make sense that		25	A. Right.	

CBQMNEW4	Goyal - cross	Page 1539	CBQMNEW4	Goyal - cross	Page 1541
1 Q. He thought you were very good at modeling?			1 Q. What type of degree was she looking for?		
2 A. Yes.			2 A. MBA.		
3 Q. This was part of the assistance that you provided			3 Q. So this was while she was getting a master's in business		
4 Mr. Tortora while he was at Diamondback and you were at			4 administration, is that right?		
5 Neuberger Berman, right?			5 A. Yes.		
6 A. Yes.			6 Q. And so while she was getting a master's in business		
7 Q. Now, what did your wife, Ruchi, know about the consulting			7 administration, she did this project which you believe she was		
8 arrangement with Diamondback?			8 shared with Prudential, is that right?		
9 A. I told her that they can't pay me so it will be in your			9 A. I think so. I am not sure about sharing with Prudential,		
10 name so I'll have invoices and you should sign them.			10 but she did this project.		
11 Q. She signed the invoices, right?			11 Q. And I think you said before that she may have given it to		
12 A. Correct.			12 Mr. Tortora, is that right?		
13 Q. Knowing that she did not do any of the work, right?			13 A. I don't remember. May have. I don't remember.		
14 A. Correct.			14 Q. Now, I want to ask you some questions about this bottoms-up		
15 Q. She knew you were going to submit those to Diamondback,			15 Dell model that we talked about.		
16 right?			16 One of the inputs to the model is unit sales for Dell,		
17 A. She knew I was, yes.			17 is that correct?		
18 Q. She knew that you got paid for that, right?			18 A. Unit sales. Okay. That's one of the inputs.		
19 A. Yes.			19 Q. In other words, the number of computers that they sell they		
20 Q. And the money, I think you said, went into a joint account?			20 refer to as units, right?		
21 A. Right.			21 A. Correct.		
22 Q. She was aware that you were getting money in exchange for			22 Q. That's an important input to the model, right?		
23 these invoices?			23 A. That is one of the important inputs, yes.		
24 A. Right.			24 Q. We have talked about these third-party research providers		
25 Q. By the way, did she ever do any consulting work for you or			25 IDC and Gartner, right?		
CBQMNEW4	Goyal - cross	Page 1540	CBQMNEW4	Goyal - cross	Page 1542
1 Mr. Tortora at Prudential?			1 A. Yes.		
2 A. I think when she was a student that she had done some			2 Q. And you're aware that IDC and Gartner report on Dell and		
3 project on some -- before iPhone was launched, some survey or			3 the other computer makers unit sales, right?		
4 something.			4 A. They report on what all the PC makers have sold in the past		
5 Q. Tell me about that.			5 quarter.		
6 A. It was as part of her class project. She did a project on			6 Q. Including Dell, right?		
7 how successful iPhone will be, and she phoned few friends, and			7 A. Including Dell, yes.		
8 there was a survey questionnaire. So she kind of sought those			8 Q. Now, the IDC and Gartner reports are based on a calendar		
9 responses and did that.			9 quarter, right?		
10 Q. So she did research on how successful she thought the			10 A. True.		
11 iPhone product would be, is that right?			11 Q. Let's take an example. For the calendar quarter January,		
12 A. It was a questionnaire, yes. It was a survey			12 February, March, when does IDC and Gartner report?		
13 questionnaire, so she did that survey work.			13 A. I think they report some time April or May.		
14 Q. Did she do a write-up on that?			14 Q. Is it right that they report usually in mid-April for the		
15 A. I think she did.			15 January, February, March quarter?		
16 Q. And you are saying that she shared that with Prudential, is			16 A. I think they have a couple of reports. One is preliminary,		
17 that right?			17 one is detail. I am not sure. End of May. I don't exactly		
18 A. I think she might have sent it to Jesse and me. I am not a			18 remember the exact timings.		
19 hundred percent sure.			19 Q. Do you recall that the Gartner and IDC reports would come		
20 Q. But your recollection is that she did do some sort of			20 out before Dell reported on its quarter?		
21 consulting project for Prudential, is that right?			21 A. I think so. I think so. Again, I'm not a hundred percent		
22 A. It was not -- I am not sure if it was a consulting -- it			22 sure.		
23 was a class project work.			23 Q. And are you aware that Dell is on a fiscal quarter that's		
24 Q. In a class where? Where was she in school at the time?			24 different from the calendar quarter?		
25 A. San Francisco.			25 A. Yes.		

CBQMNEW4	Goyal - cross	Page 1543	CBQFNEW5	Goyal - cross	Page 1545
1 Q. So Dell's quarter would be, in my example, February, March,			1	AFTERNOON SESSION	
2 and April, right?			2	2:05 p.m.	
3 A. True.			3	(In open court; jury not present)	
4 Q. And so the quarter for which IDC and Gartner report			4	THE COURT: By the way, Mr. Pendrock mentioned to my	
5 overlaps with the Dell quarter by two months, right?			5	law clerk that he had seen an article in the Times related to	
6 A. Yes.			6	the case, I guess related to insider trading and he did not	
7 Q. Now, when you were modeling, one of the things you looked			7	read it. But he has been very scrupulous about telling us when	
8 at was growth rates in unit sales, right?			8	he has encountered and article. He is adamant he did not read	
9 A. Right.			9	them, he stopped reading. So that was that, and there was	
10 Q. In other words, what you wanted to know was, has Dell sold			10	something else, too? Searches of cell phones, he thought that	
11 more or less than they did in the prior period, right?			11	might implicate some things that happened here, so he didn't	
12 A. Yeah.			12	read it.	
13 Q. Is that one of the things you looked at?			13	All right, anything I need to follow up with	
14 A. Right.			14	Mr. Pendrock? Okay, let's bring in the jury.	
15 Q. That was an important input to your model, right?			15	(Continued on next page)	
16 A. It was one of the inputs, yes.			16		
17 Q. Would it be fair to say that the growth rates reported by			17		
18 IDC and Gartner were relevant to what growth rates you might			18		
19 expect for Dell's quarter?			19		
20 A. They were helpful but, again, one missing month was a big			20		
21 part of it, too, so you had to guesstimate that, too. But it			21		
22 does give you some framework there.			22		
23 Q. In other words, the growth rate that you see in the IDC and			23		
24 Gartner data gives you a good idea of what Dell's growth rate			24		
25 is likely to be for the current quarter, right?			25		
CBQMNEW4	Goyal - cross	Page 1544	CBQFNEW5	Goyal - cross	Page 1546
1 A. Not exactly. Because Dell's growth rate is different than			1	(In open court; jury present)	
2 Dell's -- what we are talking about is, IDC and Gartner, they			2	THE COURT: All right, have a seat. You had a good	
3 gave you unit data, PC sales. So, again, if you just look at			3	lunch? It's a nice day out. We're going to resume with the	
4 desktop and notebooks, I don't know how big business that is.			4	cross-examination of Mr. Goyal by Mr. Fishbein. Okay, Mr.	
5 Maybe half or something. I don't exactly remember how big that			5	Fishbein you may proceed.	
6 is. So you don't have knowledge about rest of the business.			6	BY MR. FISHBEIN:	
7 And then the unit that was considered good -- they used to come			7	Q. Mr. Goyal, we were talking about the IDC and Gartner	
8 up with the detailed revenue and sales data, too, but I think			8	reports. Do you remember that?	
9 this was later in the quarter. I am not sure if that came			9	A. Yes.	
10 before Dell reported. It was just unit data. You still had to			10	Q. By the way did IDC and Gartner put out reports about the	
11 estimate the EPSs, which is the selling prices to get the			11	unit sales of servers as well as PCs?	
12 revenues. So, again, we are just talking about revenues for			12	A. I think the data, they did that too, I think.	
13 PCs and that doesn't mean revenue for entire Dell.			13	Q. You had mentioned before the break that IDC and Gartner	
14 THE COURT: Let's stop here because it's 1:00.			14	reports also included revenue reports, did I understand that	
15 Ladies and gentlemen, we will pick up again at 2.			15	right?	
16 Have a good lunch. Don't discuss the case, of course. See you			16	A. I think it's depending upon the details the most widely	
17 at 2.			17	read was units, but I think after that the detail reports have	
18 All stand for the jury, please.			18	some details regarding revenues and EPS's.	
19 (Jury not present)			19	Q. And those are detailed reports that the subscribers to the	
20 THE COURT: We will pick up at 2:00.			20	service get?	
21 You're on cross-examination, Mr. Goyal, so don't			21	A. That would be after a month or so. It would take a little	
22 discuss the substance of your testimony with anyone. Okay.			22	time to compile that data.	
23 THE WITNESS: Okay.			23	Q. But if you pay for the service you get this more detailed	
24 THE COURT: Thank you.			24	report, is that right?	
25 (Luncheon recess)			25	A. I think so.	

CBQFNEW5	Goyal - cross	Page 1547	CBQFNEW5	Goyal - cross	Page 1549
1 Q. That report has not only the units that the various			1 Q. I'm sorry, it's your tab 17.		
2 computer makers sell but also revenue and average selling			2 A. No, there are two or three e-mails. The e-mail from Scott		
3 price?			3 is regarding his tracker, right, and then Jesse replies to		
4 A. It's their mix of them and sometimes it really doesn't			4 that.		
5 correspond to what companies say.			5 Q. But you understood that what Mr. Tortora was sending you		
6 Q. Well, you're aware, are you not, Mr. Goyal, from your time			6 was this Kanowitz tracker, is that right?		
7 at Dell that Dell gives information directly to IDC and			7 A. Right.		
8 Gartner?			8 Q. By the way, you understood Mr. Kanowitz did his analysis of		
9 A. I'm not sure about that.			9 computer prices based on publicly available information,		
10 Q. When you were at Dell were you involved in any way in			10 correct?		
11 talking to IDC and Gartner?			11 A. He did his analysis based on the prices at a number of		
12 A. I'm not sure about that. I don't remember that.			12 different websites, so this pricing is most relevant to U.S.		
13 Q. So do you have any understanding one way or the other as to			13 consumer, and because there is no real good way to know the		
14 where IDC and Gartner gets its unit and revenue data?			14 pricing that is available to large enterprises because that's		
15 A. My understanding is they get it largely from talking to			15 done on a negotiation basis, so this is U.S. consumer prices.		
16 retailers and companies. They have a lot of people on the			16 Q. But you understood that the way he determined U.S. consumer		
17 ground that get the data. That was my understanding.			17 pricing is to go to websites and other retail outlets and		
18 Q. But you don't have any knowledge, you don't have any			18 figure out what the prices were?		
19 information to contradict that the company may have spoken to			19 A. Correct.		
20 IDC and Gartner, is that right?			20 Q. Did you also understand that this tracker was something		
21 A. True, I don't have any knowledge.			21 that Mr. Tortora developed with Mr. Kanowitz, right?		
22 Q. Let's talk about the selling prices of computers. As I			22 A. I think it was developed while at Prudential.		
23 understand it for your model you want to know how many units			23 Q. Right, and it's not something that was published generally		
24 they're going to sell, right?			24 to the financial community, correct?		
25 A. Correct.			25 A. I'm not sure about that. I think he, I think he used to		
CBQFNEW5	Goyal - cross	Page 1548	CBQFNEW5	Goyal - cross	Page 1550
1 Q. And the other important piece for the revenue is what the			1 show it to the clients at Prudential, the end results of the		
2 selling prices are, right?			2 tracker.		
3 A. Yes.			3 Q. But while you were at Neuberger Berman, because July 15,		
4 Q. Now, are you familiar with the tracker that Jesse Tortora			4 2008 you were at Neuberger Berman?		
5 used to analyze selling prices?			5 A. Right.		
6 A. Yes.			6 Q. Was it your understanding that Mr. Kanowitz generally		
7 Q. And he used that when you were at Prudential as well,			7 published this tracker or was it just available to Mr. Tortora?		
8 right?			8 A. I think my understanding was just for Jesse.		
9 A. Correct.			9 Q. So now if we look at this e-mail, this is as we said, it		
10 Q. You understood that he had a consultant named Scott			10 was forwarded to you on July 15, 2008, correct?		
11 Kanowitz who did his tracker, right?			11 A. Right.		
12 A. Correct.			12 Q. So this is two weeks before the quarter ends, right?		
13 Q. You used the tracker when you were at Prudential to analyze			13 A. Okay. Yes.		
14 the selling prices of PCs and other types of computers, right?			14 Q. Roughly two weeks before the quarter ends?		
15 A. That was one input, one input, one of many.			15 A. Right.		
16 Q. You're aware, are you not, that Mr. Tortora continued to			16 Q. And if you look at the bottom e-mail, Mr. Tortora gives		
17 use this Kanowitz tracker while he was at Diamondback, right?			17 some commentary on the tracker, correct?		
18 A. Yes.			18 A. Yes.		
19 Q. And he would show you the Kanowitz tracker, wouldn't he?			19 Q. This is the e-mail at 8:38 a.m., do you see that?		
20 A. I think I've seen that.			20 A. Yes, I do see that.		
21 Q. If we could look at Government Exhibit 204. It's already			21 Q. Mr. Tortora writes, "After monitoring recent consumer PC		
22 in evidence. It's your tab 17. Do you recognize this,			22 price declines I think we've now seen enough movement to call		
23 Mr. Goyal, as the Kanowitz tracker that Mr. Tortora forwarded			23 it a trend." Do you see that?		
24 to you in mid-July 2008?			24 A. Yes.		
25 A. This is the second e-mail, right?			25 Q. What did you understand Mr. Tortora to be saying now?		

CBQFNEW5	Goyal - cross	Page 1551	CBQFNEW5	Goyal - cross	Page 1553
1	A. It's that it's been going on for some time now.		1	A. I would assume so, yes.	
2	Q. And what has been going on for some time is a price war,		2	Q. If you could turn now to Defense Exhibit 8656, it is	
3	right, with respect to PC sales, correct?		3	your -- I'm sorry, Defense Exhibit 964 is your tab 18. Is	
4	A. PC prices were declining.		4	Defense Exhibit 964 a communication between you and Mr. Tortora	
5	Q. Because of a price war, right?		5	relating to modeling on Dell?	
6	A. Right. Oh, because -- yeah.		6	A. Yes.	
7	Q. And then if you look at the last sentence of that paragraph		7	MR. FISHBEIN: Defense offers Exhibit 964.	
8	it says, quote, "Bottom line, this very negative for Dell/HP		8	MR. TARLOWE: No objection.	
9	margin and the PC food chain as component vendors will get		9	THE COURT: Defense Exhibit 964 is received.	
10	asked for price concessions," end quote. What did you		10	(Defendant's Exhibit 964 received in evidence)	
11	understand that to mean?		11	Q. Now, this e-mail, Mr. Goyal, is dated February 4, 2009, is	
12	A. It means the lower prices will hurt their margins. Dell		12	that correct?	
13	and HP's.		13	A. True.	
14	Q. And he was commenting not only on lower computer prices but		14	Q. And that is after the end of the quarter ended	
15	also the prices of the components that go into computers,		15	January 2009, right?	
16	right? Do you see the reference to component vendors will get		16	A. Right.	
17	asked for price concessions?		17	Q. So this is actually after the quarter end, but a couple of	
18	A. Right.		18	weeks before Dell reported its results, right?	
19	Q. Now, Mr. Goyal --		19	A. Right.	
20	A. No -- actually, I'm not fully able to understand this		20	Q. And am I right, Mr. Goyal, that the subject matter of this	
21	comment, and the PC food chain as component vendors -- oh, so		21	e-mail is your reporting to Jesse Tortora on your modeling of	
22	he's saying almost everybody will have lower gross margins in		22	Dell's results.	
23	the PC future prices.		23	A. Yes.	
24	Q. So you understood that Mr. Tortora was specifically calling		24	Q. And am I right that the modeling that's referred to here,	
25	out his analysis from this tracker that Dell's margin would		25	this is not information that you got from Rob Ray, correct?	
CBQFNEW5	Goyal - cross	Page 1552	CBQFNEW5	Goyal - cross	Page 1554
1	suffer, right?		1	A. It does not look like that, correct.	
2	A. They're saying this is negative for Dell margins.		2	Q. Let's look at this e-mail, and the first sentence that you	
3	Q. And you responded, correct, in the top e-mail, right?		3	wrote to Mr. Tortora was, quote, "Looking at IDC data and	
4	A. Right.		4	plugging in some estimates." Do you see that?	
5	Q. And you say at the end, "I agree that sequential GM does		5	A. Yes.	
6	get hurt." Do you see that?		6	Q. What does that refer to?	
7	A. Yes.		7	A. It is, I said looking at from what IDC has reported and	
8	Q. What is sequential GM?		8	some of the estimates I put in the model.	
9	A. Sequential GM means gross margin compared to the previous		9	Q. So you're taking IDC unit figures and you're plugging that	
10	quarter.		10	into your model, right?	
11	Q. So the quarter we're talking about now is the quarter ended		11	A. It doesn't mean that I actually plugged in, but I have used	
12	at the end of July or beginning of August, right?		12	it in some way or shape.	
13	A. Yes.		13	Q. You based your modeling off the --	
14	Q. And the previous quarter would have been the quarter ended		14	A. Something is based on IDC yes, some PC units is based.	
15	in April, right?		15	Q. Then you say, "I am getting rev of 14B. Street at 14.7."	
16	A. Yes.		16	Do you see that?	
17	Q. So what you're saying is that you agree that GM in the		17	A. Yes.	
18	quarter ended July is going to be hurt compared to the previous		18	Q. Does that mean that your model is showing revenue of \$14	
19	quarter, right?		19	billion versus the Street at 14.7?	
20	A. Yes.		20	A. Yes.	
21	Q. Now, there's no information in this e-mail that you got		21	Q. And that was modeling based on the IDC numbers, correct?	
22	from Rob Ray, right?		22	A. I don't know if it's IDC model. It's only one small part	
23	A. True.		23	of my overall model, so I won't say that, but something based	
24	Q. So you made that conclusion based on Mr. Kanowitz' tracker,		24	upon that.	
25	right?		25	Q. But what you said in this e-mail, what you referred to is	

CBQFNEW5	Goyal - cross	Page 1555	CBQFNEW5	Goyal - cross	Page 1557
1	the IDC data?		1	A. Price declines.	
2	A. I'm saying looking at IDC data, yes.		2	Q. Is that average selling price?	
3	Q. Your e-mail continues, quote, "But I think GM will be		3	A. Yes.	
4	higher than Street estimates of 17.0 percent. Guessing around		4	Q. That's what Mr. Kanowitz tracked in his tracker?	
5	18.4 or 18.5, as I don't think ASP declines were too bad		5	A. That's what he did.	
6	relative to last QTR component cost declines. You would have a		6	Q. Then you say in parens, you say, "You would have a better	
7	better idea of that with your tracker and also due to the fact		7	idea of that with your tracker." Is that right?	
8	that biggest decline was in PCs which are lower margin		8	A. Correct.	
9	products." Do you see that?		9	Q. You're referring specifically to the Kanowitz tracker,	
10	A. Yes, I do.		10	correct?	
11	Q. Does GM refer to gross margin?		11	A. He also had another tracker for component costs where he	
12	A. Yes.		12	tracked the costs for things like hard drive memory and all, so	
13	Q. And your model is showing that gross margin would be higher		13	that's what I'm referring to.	
14	than the Street estimates, right?		14	Q. He, meaning Mr. Kanowitz?	
15	A. I'm saying guessing around 18-4 or 5. So I don't know if I		15	A. Correct.	
16	already put in the model or, you know, I was estimating that,		16	Q. So Mr. Kanowitz tracked both the prices that computers were	
17	but yeah, either way I was --		17	sold for and also the cost of various components, right?	
18	Q. Well, am I wrong, Mr. Goyal, that you wrote this e-mail		18	A. Right. The prices were just for U.S. consumer, but	
19	after working with your model?		19	component I think was all world information.	
20	A. I'm not sure because I'm saying plugging in estimates and		20	Q. In this e-mail when you discussed gross margin you made	
21	revenue, so it does look like it's from my model.		21	specific reference to that Kanowitz tracker, right?	
22	Q. And your model was estimating 18.4 or 18.5 percent GM, that		22	A. Yes. This was for component cost declines.	
23	is right?		23	Q. Then the next sentence says, "The one area I am not sure is	
24	A. The way normally for gross margin revenue you'd normally		24	services as it is highly related to units and deep declines	
25	get from bottoms up, but gross margin sometimes you put top		25	there could affect GM." Do you see that?	
CBQFNEW5	Goyal - cross	Page 1556	CBQFNEW5	Goyal - cross	Page 1558
1	down. Basically it's very hard to do gross margin at each		1	A. Right.	
2	division level, so sometimes to roll up the revenue for each		2	Q. Then you give an analysis of the server business, right?	
3	product comment and put the gross margin product for the entire		3	A. Yes.	
4	company in the model, because otherwise I wouldn't be using,		4	Q. Excuse me, the services business, right?	
5	guessing around 18.4 or 18.5, I'm not doing that for revenue.		5	A. Yes. Services, yes.	
6	Q. You just said you would roll up the revenue in the model.		6	Q. Now, that information did not come from Rob Ray?	
7	Could you explain what you mean?		7	A. I don't think so.	
8	A. I just said bottoms up, so I do this in the model.		8	Q. That was based on your general knowledge of Dell's business	
9	Sometimes I have basically get project revenues at product		9	from having worked there?	
10	level, and then sum it, picked up to get the total number. So		10	A. Right.	
11	that's the bottoms up model, that's what I was referring to		11	Q. The last sentence says, quote, "Even with lower rev, my EPS	
12	earlier.		12	is coming at .33, 3 cents higher than Street." Do you see	
13	Q. You just used the phrase "rollup," is that right?		13	that?	
14	A. Rollup, bottom, yes.		14	A. Yes.	
15	Q. In other words, the process of taking your estimates for		15	Q. And that refers to what your model was predicting for the	
16	each segment or each product type and then combine that into an		16	earnings per share for Dell for this quarter that was ended,	
17	overall revenue figure in your model, you could refer to that		17	for the quarter that we've been talking about, correct?	
18	as a rollup, right?		18	A. It does seem to indicate that, yes.	
19	A. Normally it's not. I did use that. It's normally not used		19	Q. If we could look again at Defense Exhibit 8656, it's your	
20	as a rollup number.		20	tab, we saw it. In fact, let's just put it up on the screen.	
21	Q. But that's how you referred to it a minute ago?		21	This is the e-mail, remember, where you sent on January 15, you	
22	A. I did, yes.		22	sent a copy of your Dell model?	
23	Q. Now here where you're talking about gross margin you said,		23	A. Yes.	
24	"I don't think ASP declines were too bad relative to last QTR."		24	MR. FISHBEIN: Your Honor, I'd like to read a	
25	What is ASP declines?		25	stipulation at this point.	

<p>CBQFNEW5 Goyal - cross Page 1559</p> <p>1 THE COURT: All right.</p> <p>2 MR. FISHBEIN: Read from a stipulation that the</p> <p>3 parties stipulate to the following: Defense Exhibit 8656A is a</p> <p>4 compact disk containing a spreadsheet. The spreadsheet</p> <p>5 contained an Exhibit 8656A was attached to an e-mail dated</p> <p>6 January 15, 2008 from Sandy Goyal which is marked as Defense</p> <p>7 Exhibit 8656. Defense Exhibit 8656B is a hard copy printout of</p> <p>8 excerpts of the spreadsheet contained in Defense Exhibit 8656A.</p> <p>9 And, your Honor, the defense will offer now Exhibits 8656A and</p> <p>10 8656B.</p> <p>11 THE COURT: All right. No objection, right?</p> <p>12 MR. TARLOWE: No objection.</p> <p>13 THE COURT: So Defendant's 8656A and 8656B are</p> <p>14 received.</p> <p>15 Q. Mr. Goyal, if you look at tab 19, that's 8656B which is a</p> <p>16 printout of your Dell model. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And do you recognize this as your bottoms up Dell model?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall when you did -- the stipulation I read</p> <p>21 indicated this was attached to your e-mail dated January 15.</p> <p>22 Do you recall when you last updated it prior to January 15,</p> <p>23 2008?</p> <p>24 A. I do not.</p> <p>25 Q. If you look at the cover page, there's a date on it,</p>	<p>CBQFNEW5 Goyal - cross Page 1561</p> <p>1 Q. Am I right this is the output from the model? In other</p> <p>2 words, these are the results that the model predicts?</p> <p>3 A. This is, yes, this is my model, yes.</p> <p>4 Q. If you look at the top row you see it has various dates of</p> <p>5 quarters, correct?</p> <p>6 A. Right.</p> <p>7 Q. There is shading in green starting January '08. What does</p> <p>8 that mean, what does that reflect?</p> <p>9 A. It means those quarters haven't been reported and those are</p> <p>10 my estimates.</p> <p>11 Q. This was done no later than January 15, 2008, so the next</p> <p>12 quarter to report would be the quarter ended January '08, is</p> <p>13 that correct?</p> <p>14 A. January 31, right.</p> <p>15 Q. So the upcoming quarters are shaded green, is that right?</p> <p>16 A. True.</p> <p>17 Q. At the top. And you did estimates here for revenue, right?</p> <p>18 A. Yes.</p> <p>19 Q. For earnings per share, correct?</p> <p>20 A. Earnings per share, right.</p> <p>21 Q. And for gross profit, right?</p> <p>22 A. Yes.</p> <p>23 Q. And the gross profit is also indicated as a percentage of</p> <p>24 revenue, correct?</p> <p>25 A. Correct.</p>
<p>CBQFNEW5 Goyal - cross Page 1560</p> <p>1 12.05.07. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Does that mean it's the last date or it could be after</p> <p>4 that?</p> <p>5 A. No, I think it doesn't mean, I think there was a menu</p> <p>6 there, so if you update it, then it's there. Otherwise, it's</p> <p>7 not.</p> <p>8 Q. And if you look at B2 in the upper left hand page there's a</p> <p>9 date, 1/2/08?</p> <p>10 A. Yes.</p> <p>11 Q. Does that tell you anything about when this was updated?</p> <p>12 A. I'm not sure if it was automatically changed for that day</p> <p>13 or if it was manual. I'm not sure about that.</p> <p>14 Q. I'd like to ask you a couple of questions about this model.</p> <p>15 If you go to page B4.</p> <p>16 A. Yes.</p> <p>17 Q. And in the upper left it says, "Dell Inc. income</p> <p>18 statement."</p> <p>19 MR. FISHBEIN: I don't know, Mr. McLeod, if you can</p> <p>20 get this bigger so the jury can see it. That's probably</p> <p>21 sufficient. We're not going to spend too much time on specific</p> <p>22 numbers.</p> <p>23 Q. Do you see at the upper left-hand corner it says "Dell Inc.</p> <p>24 income statement"?</p> <p>25 A. Yes.</p>	<p>CBQFNEW5 Goyal - cross Page 1562</p> <p>1 Q. Which is gross margin, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Now, if you'll turn to B6, it's called Dell product</p> <p>4 breakdown. What is this?</p> <p>5 A. This is the bottoms up thing, where everything is at a</p> <p>6 product level.</p> <p>7 Q. So you go product by product and you make an estimate as to</p> <p>8 what the revenues will be, is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. Am I right that the way you estimate revenues product by</p> <p>11 product is to look at the number of units and the average</p> <p>12 selling price?</p> <p>13 A. That is what I input in the model. I input my estimates of</p> <p>14 growth of the units and growth of EPS.</p> <p>15 Q. So what you're looking at is changes of the number of units</p> <p>16 sold and the changes in average selling price, right?</p> <p>17 A. Correct.</p> <p>18 Q. If you look at page B8, can you tell me what that is?</p> <p>19 A. This is based on Scott Kanowitz tracker and he had</p> <p>20 estimated what percentage of costs for each company comes from</p> <p>21 different components.</p> <p>22 Q. Is this an analysis of the various components that go into</p> <p>23 making a computer?</p> <p>24 A. Yes.</p> <p>25 Q. And I think you said it's based on Scott Kanowitz' tracker,</p>

CBQFNEW5	Goyal - cross	Page 1563	CBQFNEW5	Goyal - cross	Page 1565
1	is that right?		1	quarter, isn't it February, March, April and it ends in April?	
2	A. He did that initially. I think it was at Prudential and		2	A. Yes, February, March and April are three months of that	
3	that's where we add what component of total cost belongs to		3	April quarter.	
4	each component.		4	Q. That's the quarter for Dell?	
5	Q. In order to calculate gross margin in your bottoms up model		5	A. Right, right.	
6	you need to know what the various components are of the		6	Q. Now, this model was prepared before that quarter started,	
7	computer, right?		7	right?	
8	A. Yes.		8	A. From this information I won't say because this is before,	
9	Q. Because gross margin is revenues minus cost of goods sold,		9	this is definitely before they reported and they report on	
10	right?		10	February 28th or 25th or something, so it was before	
11	A. Right.		11	February 25th.	
12	Q. So for cost of goods sold you need to know how much it		12	Q. I'm asking a slightly different question which is directing	
13	costs to buy the various components used to make the computer,		13	your attention to the quarter that ended at the end of	
14	right?		14	April 2008, okay? Are you with me?	
15	A. Yeah.		15	A. Okay.	
16	Q. What you're analyzing here is the various component cost,		16	Q. That quarter started in February 2008, right?	
17	right?		17	A. Right.	
18	A. It is the only thing I'm not sure for which quarter this		18	Q. And this model is dated January 15, 2008, right?	
19	has been done.		19	A. I think that is from the e-mail, right?	
20	Q. Okay, but the type of analysis?		20	Q. Right.	
21	A. This is the type of analysis.		21	A. Okay, so January --	
22	Q. That relate specifically to component costs, right?		22	Q. So this is a model that you prepared before the quarter	
23	A. Right.		23	ended April 2008 even started, right?	
24	Q. And then if you'll look at page B9, can you tell me what		24	A. The e-mail would indicate that time, yes, right.	
25	this section of the model shows?		25	Q. Now, let's go back to page B4 of the model. You made a	
CBQFNEW5	Goyal - cross	Page 1564	CBQFNEW5	Goyal - cross	Page 1566
1	A. I think it's showing for 2007 fiscal year, which is		1	prediction here as to what the results would be for the quarter	
2	actually 2006 numbers, what percentage of revenue and gross		2	ended April 2008, correct? If you look at the April '08	
3	profit came from each product.		3	column.	
4	Q. Am I right, Mr. Goyal, that as part of your model you kept		4	A. Yes.	
5	various charts and analyses of Dell's performance over the		5	Q. And what did you predict back in January of 2008, what did	
6	years?		6	you predict for revenues for that quarter ended April '08?	
7	A. Yes.		7	A. It will be 16 billion, around \$16 billion.	
8	Q. Now, I think you said that this model was prepared before		8	Q. 16.071, right?	
9	the quarterly report at the end of February 2008, right?		9	A. Right.	
10	A. This -- yes, before that, because it's shaded in green,		10	Q. And what did you predict for gross margin?	
11	yes.		11	A. Gross margin would be 18.5 percent.	
12	Q. And it certainly, it was before -- strike that. Do you		12	Q. What did you predict for earnings per share?	
13	recall that you testified previously about Dell's quarter ended		13	A. Thirty-eight cents.	
14	April of 2008 that was reported in May?		14	Q. By the way, under earnings per share on the left, it	
15	A. Excuse me? I didn't get it.		15	indicates GAAP. Does that mean that you were modeling a GAAP	
16	Q. Do you remember that the prosecutor asked you some		16	number?	
17	questions about Dell's quarter ended April 2008, or maybe it		17	A. This is GAAP and pro forma only. The difference between	
18	was May 2nd, that was reported at the end of May, 2008. Do you		18	those two numbers is one-time adjustments. If you don't have	
19	remember that?		19	any one-time adjustments, they are same.	
20	A. Okay. Which part?		20	Q. Now, do you recall how your estimate plate for that quarter	
21	Q. But Dell has a quarter --		21	ended April '08 as reflected in that model, how that estimate	
22	A. Correct, yes.		22	compared to the actual results?	
23	Q. That's February, March, April, right?		23	A. Say that again?	
24	A. January through April and so on, right.		24	Q. Do you recall how accurate your model was that you did in	
25	Q. But let's talk specifically about Dell, right? Dell's		25	January 2008 in predicting what the results would be in that	

CBQFNEW5	Goyal - cross	Page 1567	CBQFNEW5	Goyal - cross	Page 1569
1	April 2008 quarter?		1	A. Yes.	
2	A. No.		2	Q. When you responded in June of 2008 you copied the friend,	
3	Q. If we could look at Government Exhibit 1803, it's your tab		3	right?	
4	20. It's already in evidence. Do you recognize this,		4	A. Right.	
5	Mr. Goyal, as the official Dell announcement for the quarter		5	Q. Sarah Chandler, is that right?	
6	ended May 2, 2008?		6	A. Yes.	
7	A. Yes.		7	Q. Do you know Sarah Chandler?	
8	Q. And that's the quarter we're talking about, it ends at the		8	A. No.	
9	end of April or the beginning of May, right?		9	Q. So you understood this just to be a friendly request, can	
10	A. Right.		10	you find me some information, right?	
11	Q. Now, what is the revenue number that Dell actually		11	A. Yeah. Then Jesse asked to provide that information that	
12	reported?		12	his friend was asking for.	
13	A. \$16.077 billion.		13	Q. This information did not come from Rob Ray, did it?	
14	Q. And your number was 16.071 billion, right?		14	A. Yeah. The information she was asking for was very	
15	A. Yes.		15	different than is normally reported in financial results.	
16	Q. Would you say that you came very, very close?		16	Q. So this was not information that you got from Rob Ray,	
17	A. Yes.		17	right?	
18	Q. And that was based on legitimate modeling, right?		18	A. True.	
19	A. Yes.		19	Q. In fact, you weren't able to find some of the information	
20	Q. Now, what's the gross margin that Dell reported for that		20	but what you could find you gave back to Mr. Tortora, right?	
21	quarter?		21	A. Excuse me?	
22	A. 18.4 percent.		22	Q. Were you able to find all of the specific information Mr.	
23	Q. And what did you predict?		23	Tortora was asking for?	
24	A. I don't --		24	A. No.	
25	Q. Well, you can look at your tab 19, page B4. What was your		25	Q. Now, if you look at the middle e-mail, Mr. Tortora wrote to	
CBQFNEW5	Goyal - cross	Page 1568	CBQFNEW5	Goyal - cross	Page 1570
1	prediction?		1	you, copied to Todd Newman, "Hi, Sandy. Hoping you could help	
2	A. 18.5 percent.		2	as you're the best on Dell." Do you see that?	
3	Q. And what was the EPS that they actually reported?		3	A. Yes.	
4	A. Thirty-eight cents.		4	Q. And "best on Dell" refers to your expertise on Dell, right?	
5	Q. And what did you predict back in January of 2008?		5	A. He meant expertise on modeling -- I don't know, yeah,	
6	A. Thirty-eight cents.		6	something like that.	
7	Q. You're a good modeler, aren't you, Mr. Goyal?		7	Q. Because you had worked at Dell, right?	
8	A. It would indicate so.		8	A. Yes.	
9	Q. You had a reputation, didn't you, for being especially		9	Q. And you had studied Dell as an analyst for several years,	
10	proficient, especially expert in Dell and Dell modeling, didn't		10	right?	
11	you?		11	A. Yes.	
12	A. I'm not sure how to answer you.		12	Q. And you were good at modeling Dell?	
13	Q. Let's look at Defense Exhibit 8779. It's your tab 21. Is		13	A. I don't understand -- I don't know exactly what the best,	
14	this an e-mail between you and Mr. Tortora on the subject of		14	but it was in overall terms like that, like, in terms of	
15	Dell on May 22, 2008, in May and June, an e-mail chain?		15	modeling and all that, I'm good at it, yes.	
16	A. Yes.		16	Q. But you would agree that you have valuable experience and	
17	MR. FISHBEIN: Defense offers Exhibit 8779.		17	expertise in analyzing Dell's results, right?	
18	MR. TARLOWE: No objection.		18	A. True.	
19	THE COURT: Defendant's Exhibit 8779 is received.		19	Q. I want to direct your attention now to this quarter we	
20	Q. Mr. Goyal, if you look at the e-mail in the middle of the		20	talked about before, the one ending May 2, 2008 reported on	
21	first page, it's from Jesse Tortora to you copied to Todd		21	May 29, 2008. Are you with me?	
22	Newman May 22, 2008. Do you see that?		22	A. Which?	
23	A. Yes.		23	Q. The quarter, if you'd like, I think there's a chart, and	
24	Q. And did you understand that Mr. Tortora was asking you to		24	we'll be going through some of the -- feel free to refer to	
25	provide some analysis on Dell for a friend of his?		25	this chart. It's Government Exhibit 90 that has the quarter	

CBQFNEW5	Goyal - cross	Page 1571	CBQFNEW5	Goyal - cross	Page 1573
1	dates. I want to direct you to the quarter ended May 2, 2008		1	A. Or from sell to neutral.	
2	where the earnings report was on May 29, 2008. Are you with		2	Q. Do you recall you upgraded Dell on May 11, 2008?	
3	me?		3	A. I don't recall that, but I think it happened.	
4	A. Yes.		4	Q. You can turn to Defense Exhibit 208, it's tab 22 in your	
5	Q. Do you recall what the information was that Rob Ray --		5	binder.	
6	strike that. Do you recall what the information was that you		6	A. Yes.	
7	say Rob Ray gave you that quarter?		7	MR. FISHBEIN: Defense offers Exhibit 208.	
8	A. No.		8	MR. TARLOWE: No objection.	
9	Q. Do you recall that the information you say you got was that		9	THE COURT: Defense 208 is received.	
10	gross margin would be higher than street estimates?		10	(Defendant's Exhibit 208 received in evidence)	
11	A. I don't recall what he gave me.		11	Q. Mr. Goyal, is this your upgrade report -- strike that. Is	
12	Q. If you look in your 3500 binder, that separate binder under		12	this the upgrade report that you and Mr. Abbasi worked on	
13	tab 43, and I'm going to ask you to read something to yourself.		13	for Dell?	
14	A. Tab -- which one?		14	A. Yes.	
15	Q. 43. And you can look at the first page of the document on		15	Q. It's dated May 11, 2008, correct?	
16	the upper left just so you can see what it is. And then if you		16	A. Yes.	
17	turn to paragraph 7 on page 3 --		17	Q. It was sent around at 5:57 p.m., right?	
18	A. Okay.		18	A. Yes.	
19	Q. You have paragraph 7 on page 3?		19	Q. Now, if you look at the summary and investment conclusion,	
20	A. Yes, I have.		20	are you with me there?	
21	Q. And three lines from the bottom, just read that to		21	A. I am.	
22	yourself.		22	Q. First you say, "We are upgrading shares of Dell to a buy	
23	(Pause)		23	from neutral." Do you see that?	
24	Q. Have you read that?		24	A. Yes.	
25	A. Yes.		25	Q. That means before it was a neutral, meaning you didn't have	
CBQFNEW5	Goyal - cross	Page 1572	CBQFNEW5	Goyal - cross	Page 1574
1	Q. Does that refresh your memory that the information you say		1	a view one way or the other as to whether to buy the stock,	
2	you got from Rob Ray was that Dell's gross margin would exceed		2	right?	
3	market expectations that quarter?		3	A. Yes.	
4	A. No, it doesn't.		4	Q. Now it's being upgraded to a buy meaning you're telling	
5	Q. You upgraded Dell in your own report on May 11, 2008. Do		5	people at Neuberger Berman this is a stock to buy, correct?	
6	you recall that?		6	MR. TARLOWE: Objection to form. The "you"?	
7	A. I wasn't the senior analyst. I was the associate, so it		7	Q. I'll rephrase. What did you understand the sentence,	
8	would only be my boss.		8	quote, "We are upgrading shares of Dell to a buy from neutral,"	
9	Q. You and Mr. Abbasi would write research reports within		9	what did you understand that to mean?	
10	Neuberger Berman?		10	A. We are recommending to buy, buy that stock.	
11	A. Yes.		11	Q. The previous status before this upgrade was neutral,	
12	Q. In a way you were like a sell side operation but just for		12	correct?	
13	Neuberger Berman, right? Strike that.		13	A. Yes.	
14	A. Yes.		14	Q. What does neutral mean?	
15	Q. You and Mr. Abbasi would write research reports commenting		15	A. Neutral meaning we don't have a view one way to either buy	
16	on certain stocks, right?		16	or sell.	
17	A. Right.		17	Q. If you look at the next paragraph, it says, "We had	
18	Q. Those would be read by portfolio managers and others within		18	dinner," right?	
19	Neuberger Berman, correct?		19	A. Yes.	
20	A. Right.		20	Q. That paragraph refers to information that you got from the	
21	Q. From time to time you would upgrade Dell, meaning you would		21	chief financial officer of Dell, is that correct?	
22	change your rating on Dell, right?		22	A. Just want to explain. So the we, just normally, normal	
23	A. Yes.		23	people write, even if a single person is writing, they write	
24	Q. And upgrade means to change a rating from neutral to buy,		24	we, so it doesn't mean we both.	
25	right?		25	Q. Did you review this upgrade before it went out?	

CBQFNEW5	Goyal - cross	Page 1575	CBQFNEW5	Goyal - cross	Page 1577
1	A. Fayad is my boss, so he would a lot of times he sent these		1	to cut costs including through head count reduction, right?	
2	out, so he would just send me his note, and I'll send it out.		2	A. I think so.	
3	Q. But you actually sent it out?		3	Q. What Mr. Abbasi learned from the Dell chief financial	
4	A. Again, it would say Sandy write this, so I would write it		4	officer and what's reported here is that they were ahead of	
5	and send it out.		5	plan on their cost cutting, is that right?	
6	Q. All right, but was it important to read reports that were		6	A. It's right.	
7	issued under Mr. Abbasi's name and your names?		7	Q. Now, if you look at Defense Exhibit 194, that's your tab	
8	A. Sometimes. If we're under a time crunch, he's the final on		8	23, do you recognize that as a note by Mr. Abbasi of his	
9	it. He would do it, I would send it out.		9	meeting with the Dell CFO?	
10	Q. Typically, however, wouldn't you at least read the report		10	A. Yes.	
11	before it went out?		11	MR. FISHBEIN: Defense offers Exhibit 194.	
12	A. Like some parts it would be, normally the top two		12	MR. TARLOWE: No objection.	
13	paragraphs would be by him and again I won't say that a		13	Q. And you'll see there, Mr. Abbasi --	
14	majority of times I read it or not, so sometimes -- that's		14	THE COURT: Wait one second. Let's have a sidebar.	
15	final anyway.		15	MR. FISHBEIN: I'm going to ask another foundation	
16	Q. How about the paragraphs on the top in that report, is it		16	question if you'd like, your Honor.	
17	yours?		17	THE COURT: No, that's all right.	
18	A. Normally it is, these would be at the end of the quarter.		18	(Continued next page)	
19	The complete reports in the quarter. What would happen is		19		
20	details and analysis would contain all the numbers, I would		20		
21	write that part, Sandy to final, and then he would write on the		21		
22	report he had a meeting and he would send it out.		22		
23	Q. But you had some familiarity with these reports even if you		23		
24	didn't draft the whole thing, is that right?		24		
25	A. I had some familiarity.		25		
CBQFNEW5	Goyal - cross	Page 1576	CBQFNEW5	Goyal - cross	Page 1578
1	Q. So if you look at the paragraph that says, "We had dinner		1	(At the side bar)	
2	with the CFO," do you see that?		2	THE COURT: I'm not sure what I'm missing, but why is	
3	A. Yes.		3	this not hearsay?	
4	Q. Do you understand that to be relating certain information		4	MR. FISHBEIN: It's being offered to show the nature	
5	that Mr. Abbasi got from Dell's chief financial officer?		5	of the information that Mr. Goyal had available to him at the	
6	A. Yes.		6	time, whether true or not. In other words, we don't, we're not	
7	Q. And do you recall that the information he was relating was		7	interested in the truth of how many heads they cut, what their	
8	that Dell was ahead of their plan on certain cost cutting?		8	head count was. It was just that Mr. Goyal had information	
9	A. Right.		9	available to him about these head count reductions and you'll	
10	Q. Specifically, what is reported here is that Dell was		10	see as it develops that that was very important to him. It's	
11	running three times to 3.5 times ahead of expectations of a		11	not coming from Rob Ray. It's coming from an authorized source	
12	1,000 person head count reduction, do you see that?		12	and it was a very important part of his upgrade, so I think it	
13	A. Right.		13	shows what type of information was important to him at the time	
14	Q. Do you recall that at this time Dell was telling analysts		14	and where he's getting it from.	
15	that they were going to reduce costs?		15	MR. TARLOWE: Though I think the where he's getting it	
16	A. I think at the end of the previous quarter, which was		16	from, that part is hearsay.	
17	January quarter, they had mentioned that they do plan to		17	THE COURT: That's what I keep going back to. If	
18	implement some cost cutting measures.		18	he's -- I'm not sure why we need this exhibit, I'm not sure we	
19	Q. Cost cutting is relevant to operating expense, right?		19	need a lot of these exhibits.	
20	A. Right.		20	MR. FISHBEIN: Honestly, your Honor --	
21	Q. And that's a key driver of earnings, right?		21	THE COURT: But nobody is objecting to anything so I	
22	A. That is one of the drivers of earnings, yes.		22	don't want to overdo it. We're moving at a snail's pace.	
23	Q. So analysts pay attention to cost cutting, right?		23	MR. FISHBEIN: I'm going to spend two seconds on it.	
24	A. Yes, they do.		24	THE COURT: Why do you need that he had access to --	
25	Q. And Dell at the end of the last quarter said it was going		25	MR. FISHBEIN: Actually, it's in the other exhibits.	

CBQFNEW5	Goyal - cross	Page 1579	CBQFNEW5	Goyal - cross	Page 1581
1	If you want I can move on.		1	the 415-736-2210 number, right?	
2	THE COURT: Let's move on. I'm concerned it's almost		2	A. Correct.	
3	December.		3	Q. If you look at May 12, 2008 at 7:57 a.m. there's a call,	
4	MR. FISHBEIN: I'm not much longer here.		4	right? It just says 5/12/08, and that's to an 813 number,	
5	(Continued on next page)		5	correct?	
6			6	A. Yes.	
7			7	Q. That's the number you previously said was Mr. Ray's number,	
8			8	right?	
9			9	A. Correct.	
10			10	Q. The parties stipulated this is Greenwich mean time, so	
11			11	7:57 a.m. on the 12th is 8:57 p.m. on May 11, 2008. Does this	
12			12	reflect that you spoke to Rob Ray for 31 minutes at 8:57 p.m.	
13			13	on May 11, 2008?	
14			14	A. Yes.	
15			15	Q. Now, we saw before with Exhibit 208, and you can go back to	
16			16	your tab 22, that you issued your upgrade on May 11, 2008 at	
17			17	5:57 p.m., right?	
18			18	A. Right.	
19			19	Q. So that's three hours before speaking to Mr. Ray, correct?	
20			20	A. Correct.	
21			21	Q. Now, did you tell Mr. Abbasi don't issue the upgrade	
22			22	because I'm going to call Rob Ray?	
23			23	A. No.	
24			24	Q. You issued the upgrade before speaking to him, right?	
25			25	A. Yes.	
CBQFNEW5	Goyal - cross	Page 1580	CBQFNEW5	Goyal - cross	Page 1582
1	(In open court; jury present)		1	Q. And what was important to you at Neuberger Berman in doing	
2	BY MR. FISHBEIN:		2	this upgrade was the information you received from the chief	
3	Q. Mr. Goyal, if we could look now at tab 24, this is Defense		3	financial officer about head count reduction, right?	
4	Exhibit, I believe this is correlating with Defense Exhibit AA,		4	A. Again, it was because Fayad that did the upgrade. It's not	
5	excuse me, 2607-AA, which is an excerpt from 2607 already in		5	me who did the upgrade. He did it based on information he	
6	evidence. Do you see that? It's your tab 24.		6	received from CFO, yes.	
7	A. You're not talking about Defense Exhibit 194, you're		7	Q. By the way, are you aware that Michael Dell, the chief	
8	talking about other one, right?		8	executive officer of Dell, gave an interview on or about	
9	Q. This should be your tab 24.		9	May 28, 2008, the day before Dell announced its results?	
10	A. Okay.		10	A. I'm not sure if I recall that.	
11	Q. Do you see it, phone records? Do you see I think it's		11	Q. You could look at your tab 25. It's Defense Exhibit 8222	
12	paper clipped to your tab.		12	already in evidence. Do you recall knowing at the time	
13	THE COURT: Tab 24.		13	that Michael Dell gave this interview?	
14	A. Yes, yes, I'm sorry.		14	A. I would have. I don't recall seeing this.	
15	Q. Here.		15	Q. In your experience having worked at Dell, and having	
16	A. All right.		16	studied Dell, was it unusual for Michael Dell to give public	
17	MR. FISHBEIN: And your Honor, this is an excerpt of		17	comments shortly before the earnings release?	
18	what's already in evidence. To the extent we're offering the		18	A. Normally it's unusual for anybody in any company to do	
19	excerpts we would offer it as an --		19	that.	
20	THE COURT: I think there's nothing wrong with it.		20	Q. I want to direct your attention now to the quarter ended	
21	The excerpts are more pinpointed. No objection right?		21	August 1, 2008 that was reported August 28th. Are you with me?	
22	MR. TARLOWE: No.		22	A. Okay.	
23	THE COURT: So Defense Exhibit 2607AA is received.		23	Q. And if you could look at Government Exhibit 223 already in	
24	(Defendant's Exhibit 2607AA received in evidence)		24	evidence, it's your tab 26. Am I right, Mr. Goyal, that this	
25	Q. Mr. Goyal, these are records of your phone, right? That's		25	is an e-mail exchange between you and Jesse Tortora on	

CBQFNEW5	Goyal - cross	Page 1583	CBQFNEW5	Goyal - cross	Page 1585
1	August 15, 2008?		1	Q. So am I right that this includes certain segment	
2	A. Yes.		2	information from Dell?	
3	Q. If you look at the bottom e-mail, Mr. Tortora writes to you		3	A. Yes.	
4	at 10:44 a.m., quote, "Would you want to do late lunch? I can		4	Q. Isn't it correct, Mr. Goyal, that that information did not	
5	meet you at 2:00 p.m. somewhere on 3rd. Let me know," end		5	come from Rob Ray?	
6	quote. Do you see that?		6	A. Actually, it could have come from him.	
7	A. Yes, I do.		7	Q. I thought you said that he was in investor relations at	
8	Q. Whose idea was having lunch that day?		8	this time, right?	
9	A. I don't recall, seems from the e-mail it's Jessie.		9	A. Yes.	
10	Q. Was there a conversation prior to this e-mail where you		10	Q. And this is that same time where you had friends that were	
11	suggested you have lunch?		11	working in various business segments at Dell, correct?	
12	A. I may have.		12	A. Yes.	
13	Q. But looking at this e-mail, it's your recollection that he		13	Q. So looking at this, can you be sure that this information	
14	proposed it?		14	did not come from your other friends that were involved in	
15	A. I don't have any recollection one way or the other that he		15	Dell's business segments?	
16	proposed it.		16	A. Most probably it is from Rob. The reason being he was in	
17	Q. Do you see there's a reference to meeting on August 15 for		17	investor relations and they have a view not only to the	
18	lunch?		18	consolidated results but also the results that are reported,	
19	A. Yes.		19	because the results are reported at product level as well as a	
20	Q. Do you recall whether you met him for lunch that day?		20	geographic level and they make presentation. Because none of	
21	A. Yes.		21	my friends would have, other people would have information	
22	Q. Do you recall any specific purpose for this meeting?		22	about Asia, so I think he was the only one.	
23	A. I don't.		23	Q. If you look at the bottom e-mail dated February 19?	
24	Q. It doesn't stand out in your mind?		24	A. Okay.	
25	A. No.		25	Q. Do you see it says, "I recently got some data points from	
CBQFNEW5	Goyal - cross	Page 1584	CBQFNEW5	Goyal - cross	Page 1586
1	Q. If you could look at Government Exhibit 713 already in		1	my Dell contacts." Do you see that?	
2	evidence, it's your tab 32. Mr. Tarlowe asked you some		2	A. Yes.	
3	questions about this and I believe you said this is an e-mail		3	Q. And contacts has an S, right?	
4	that you sent to some of your colleagues at Neuberger Berman,		4	A. Yes.	
5	is that correct?		5	Q. So you meant that as plural, is that correct?	
6	A. Right.		6	A. I don't -- I don't know, because I could have just said	
7	Q. And this is, if you're looking at Government Exhibit 713,		7	that as contacts instead of one contact.	
8	the top e-mail is February 25, 2008, right?		8	(Continued next page)	
9	A. Yes.		9		
10	Q. And then that forwards an earlier e-mail dated February 19,		10		
11	is that correct?		11		
12	A. True.		12		
13	Q. And I believe you testified that this included information		13		
14	from Rob Ray, is that right?		14		
15	A. Yes.		15		
16	Q. Now, if you look at the top e-mail on 7/13, the one dated		16		
17	February 25th, and look four bullet points down, do you see		17		
18	that?		18		
19	A. Yes.		19		
20	Q. It says, "Server/storage was weak. Moving away from EMC."		20		
21	Do you see that?		21		
22	A. Yes.		22		
23	Q. And below that it says, "Asia was very strong, margins		23		
24	strong too." Do you see that?		24		
25	A. Yes.		25		

CBQMNEW6	Goyal - cross	Page 1587	CBQMNEW6	Goyal - cross	Page 1589
1 Q. If you look on that e-mail, dated February 19, four bullet			1 A. I'm not sure if I was thinking whether I got it properly or		
2 points down it says: Revenue in U.S. business segment grew			2 improperly. I just got this information and conveyed it to		
3 around 1 to 2 percent.			3 them.		
4 Do you see that?			4 Q. You weren't trying to signal to them that it was obtained		
5 A. I do.			5 improperly, were you?		
6 Q. Then below that it says: Revenue in U.S. consumer business			6 A. I wasn't trying to signal anything else. I wasn't trying		
7 grew substantially.			7 to signal that it was obtained improperly.		
8 Do you see that?			8 Q. In fact, you wrote it in a way that would look like normal		
9 A. Yes.			9 research so as not to raise suspicion, right?		
10 Q. And U.S. consumer was where you had a friend who you spoke			10 A. I'm not sure if this kind of information would be normal		
11 to, right?			11 research.		
12 A. Correct.			12 Q. But you didn't write it in a way where you thought that		
13 Q. Looking at this, is it impossible that you got some of this			13 they would be concerned about it, right?		
14 information from your friend?			14 MR. TARLOWE: Objection.		
15 A. It is possible. The only thing is, again, I'm seeing there			15 THE COURT: Sustained.		
16 is a comment about Asia and none of my friends except Rob, they			16 Q. Weren't you concerned, Mr. Goyal, that if you wrote		
17 have any information regarding Asia and U.S. business and			17 something that was obviously improper you could get in trouble		
18 consumer, again, because he was in IR and he would have some			18 at Neuberger Berman?		
19 insight into what they were representing. So he might have			19 A. I'm not sure if I thought about that because obviously I'm		
20 some insight there.			20 writing these e-mails. I am not sure what I thought.		
21 Q. Mr. Goyal, looking at these e-mails today, you cannot be			21 Q. If you could now look at Government Exhibit 747. It's tab		
22 sure that this information came 100 percent from Rob Ray, isn't			22 36.		
23 that a fact?			23 Does that reflect an e-mail between you and Mr. Abbasi		
24 A. Which information are we talking about?			24 forwarding your communication with Mr. Niles in August of 2008?		
25 Q. The U.S. business segment growth, the U.S. consumer			25 A. Yes.		
CBQMNEW6	Goyal - cross	Page 1588	CBQMNEW6	Goyal - cross	Page 1590
1 business, the server storage, the ones that I pointed out to			1 MR. FISHBEIN: Defense offers Government Exhibit 747.		
2 you.			2 THE COURT: Any objection?		
3 A. These three most probably came from him, but you can see --			3 MR. TARLOWE: I'm sorry, your Honor. Just give me one		
4 server, I don't think anybody else had this thing. So U.S.			4 moment.		
5 business and consumer are the only ones, so there can be no			5 No objection.		
6 doubt. The other place nobody else had that information.			6 THE COURT: Government Exhibit 747 is received.		
7 Q. As you sit here now you can't be 100 percent sure?			7 (Government's Exhibit 747 received in evidence)		
8 A. For these two, right.			8 Q. Mr. Goyal, does this reflect that you spoke to Dan Niles		
9 Q. Now, the people that you sent this e-mail to included			9 about Dell on or about August 22, 2008?		
10 Mr. Brendan Smith, right?			10 A. I am not sure. I think I received this e-mail and		
11 A. Yes.			11 forwarded that. Most probably I did speak to him. I don't		
12 Q. Mr. Dan Niles and Mr. Dan Fletcher, correct?			12 remember better.		
13 A. Correct.			13 Q. Do you remember what information you may have given him?		
14 Q. You said previously who they were, right?			14 MR. TARLOWE: Objection.		
15 A. Right.			15 THE COURT: Do you remember what information, if any,		
16 Q. You didn't know those people very well, did you?			16 you gave him?		
17 A. Not that well. I talked to Fletcher a few times. Niles I			17 THE WITNESS: I don't even remember talking to him, so		
18 don't think. Brendan Smith, maybe two, three times.			18 I don't remember giving any or what information to him.		
19 Q. When you wrote these e-mails and you sent these e-mails to			19 Q. Do you recall whether, when you gave Dell-related		
20 them, you were not intending to convey to them that you would			20 information to Mr. Niles, it was different or the same as what		
21 obtain this information improperly, were you?			21 you gave to Mr. Tortora?		
22 A. I don't catch your point.			22 MR. TARLOWE: Objection.		
23 Q. When you wrote these e-mails that were sent to Mr. Smith,			23 THE COURT: Overruled. If you can answer it, if you		
24 Mr. Niles, and Mr. Fletcher, you did not intend to convey to			24 know.		
25 them that you had gotten this information improperly, did you?			25 A. I don't remember talking to Mr. Dan. The only thing I		

CBQMNEW6	Goyal - cross	Page 1591	CBQMNEW6	Goyal - cross	Page 1593
1	remember is through the e-mails that I sent him.		1	Defense Exhibit 8679.	
2	Q. Do you know one way or the other as to whether Mr. Niles		2	Do you recognize that as an e-mail from your wife to	
3	took a trading position with Dell in August of 2008?		3	you, February 19, 2008?	
4	A. I do not, no.		4	A. Yes.	
5	MR. FISHBEIN: Your Honor, I would like to read from a		5	Q. And it attaches her résumé, is that correct?	
6	stipulation at this point. The parties have stipulated that		6	A. Right.	
7	Government Exhibit 2501, which is already in evidence, includes		7	Q. Now, we were talking before about whether your wife did	
8	various trading records from Diamondback Capital, Level Global,		8	consulting for Prudential.	
9	Neuberger Berman, and Whittier Trust, and it goes on. And then		9	Do you remember that?	
10	it says:		10	A. Right.	
11	The Neuberger Berman trading records that are in		11	Q. And if you look at the second page, I'll ask you whether	
12	Government Exhibit 2501 are divided as follows: Government		12	that refreshes your memory concerning my consulting that your	
13	Exhibit 2501-NA contains all Dell common stock trades in		13	wife did for Prudential.	
14	Neuberger Berman's Satori Technology MA fund referenced in the		14	A. Correct.	
15	Neuberger trade records in Government Exhibit 2501. Government		15	MR. FISHBEIN: The defense offers Exhibit 8679.	
16	Exhibit 2501-NAO contains Dell options trades referenced in the		16	THE COURT: Any objection?	
17	Neuberger Berman's Satori technology MA fund referenced in the		17	MR. TARLOWE: Yes, your Honor. Hearsay.	
18	Neuberger trade records in Government Exhibit 2501. It is		18	MR. FISHBEIN: It goes to this witness' understanding,	
19	further stipulated that Dan Niles was the portfolio manager of		19	your Honor.	
20	Satori Technology MA fund at Neuberger, and the defense will		20	THE COURT: Are you offering what's on the résumé for	
21	offer Government Exhibit 2501NA which, as I said, is an excerpt		21	the truth of it?	
22	of the overall trading records that are in evidence.		22	MR. FISHBEIN: Let me ask a few questions without	
23	THE COURT: All right.		23	offering it.	
24	Q. Mr. Goyal, if you could look at tab 37. That's what we		24	Q. Mr. Goyal, isn't it a fact that your wife, Ruchi, did do	
25	have stipulated are the trading records of the fund that		25	research for Prudential between January and April 2007?	
CBQMNEW6	Goyal - cross	Page 1592	CBQMNEW6	Goyal - cross	Page 1594
1	Mr. Niles worked on.		1	A. I think it's the same thing I said earlier. It was a class	
2	A. Okay.		2	project where they had do the survey for the upcoming iPhones.	
3	Q. Do you see on August 26 there is a transaction in Dell?		3	She did that survey. So that was it. So I think that's the	
4	A. Okay, yes.		4	project we are talking about here.	
5	Q. Do you understand that Mr. Niles bought 154,000 in Dell		5	Q. You're aware that she listed it on her résumé, right?	
6	shares at the end of August 2008?		6	A. Yes.	
7	A. Yes.		7	Q. You don't believe that she was deceptive in her résumé,	
8	Q. So that's a long position at Dell, correct?		8	right?	
9	A. Yes.		9	A. I think she may have like sent it to Jesse, the final	
10	Q. That was on August 26, 2008, correct?		10	results. So class project means it's whatever is there, she	
11	A. Correct.		11	did it. And if it presented to Jesse, then she did it for	
12	Q. And the e-mail from Mr. Niles to you about the phone call		12	Prudential integral. So that's it.	
13	was August 22, correct?		13	Q. When this project was provided to Jesse Tortora, he was	
14	A. I think so.		14	working at Prudential, right?	
15	Q. Did anybody at Dell ever try to limit your access to		15	A. Yes.	
16	speaking with Dell investor relations?		16	Q. Related to one of the companies that Mr. Tortora covered,	
17	A. I don't think so.		17	which was Apple, right?	
18	Q. So nobody at Dell ever called you up and said, we don't		18	A. Correct.	
19	want you to speak to Dell investor relations?		19	Q. Do you know if your wife got paid for this consulting?	
20	A. I don't think so.		20	A. I don't think so.	
21	Q. Did anybody at Dell ever take any action, to your		21	Q. Do you know one way or the other?	
22	knowledge, to limit or restrict your access to anybody at Dell,		22	A. My recollection, no.	
23	whether they were in investor relations or not?		23	Q. But you do recall that she listed it as a consulting	
24	A. I don't think anybody did anything especially for me.		24	project on her résumé?	
25	Q. Mr. Goyal, I am going to show you what's been marked as		25	A. Yes, she did.	

CBQMNEW6	Goyal - cross	Page 1595	CBQMNEW6	Goyal - cross	Page 1597
1 Q. You were first approached by the FBI in this case at the			1 Q. Do you remember them getting very angry at you?		
2 end of July 2011, correct?			2 A. Yes.		
3 A. I just want to say, it's student consulting, just to			3 Q. How did they show that they were angry at you?		
4 clarify.			4 A. They were just starting -- I remember they -- I don't		
5 Q. I was asking you about when you were first approached by			5 remember exactly, but I do remember that's one of the things,		
6 the FBI. Do you recall that was in late July of 2011?			6 they got angry at me, and basically I said I'll need to talk to		
7 A. Yes.			7 a lawyer.		
8 Q. You were at a train station, correct?			8 Q. What did they say, though, that made you believe that they		
9 A. Correct.			9 were angry?		
10 Q. And two agents approached you, right?			10 A. I think they said, you are lying.		
11 A. Yes.			11 Q. They said that forcefully, right?		
12 Q. That was Agent Makol, right?			12 A. I think so.		
13 A. Yes.			13 Q. Ultimately, you decided to cooperate, didn't you?		
14 Q. And Agent Hinkle?			14 A. I talked to my lawyers and I decided to cooperate.		
15 A. Yes.			15 Q. Now, when you decided to cooperate you understood that you		
16 Q. He's in the courtroom -- he's not in the courtroom.			16 had submitted false instructions to Diamondback, right?		
17 These two FBI agents approached and said they wanted			17 A. Yes.		
18 your cooperation, right?			18 Q. In other words, these payments that you got from		
19 A. I'm not sure exactly they said to me.			19 Diamondback, you understood that you had written out and		
20 Q. At some point they told you they wanted you to cooperate in			20 submitted invoices for that that were fake, right?		
21 the investigation, is that correct?			21 A. Okay.		
22 A. I believe so.			22 Q. Did you understand that?		
23 Q. And they had some personal information about you, didn't			23 A. Yes.		
24 they?			24 Q. And you understood that that's a crime, right?		
25 A. Yes.			25 A. I am not sure like what kind of crime. I understood, but I		
CBQMNEW6	Goyal - cross	Page 1596	CBQMNEW6	Goyal - cross	Page 1598
1 Q. And that was kind of scary to you, wasn't it?			1 knew they were not true.		
2 A. I'm not sure scary or not, but there was some personal			2 Q. And at the time that you decided to cooperate you also		
3 information they had.			3 understood that you had potential tax problems, right?		
4 Q. Do you recall that they told you that if you cooperated you			4 A. I decided -- are we talking about July?		
5 might get probation?			5 Q. Whenever you decided to cooperate.		
6 A. I don't know if they used the word probation or not.			6 A. At that time I didn't realize that.		
7 Q. Do you recall -- you took notes, correct?			7 Q. But you knew at that time that you had taken improper		
8 A. Correct.			8 deductions on your tax returns, right?		
9 Q. And do you recall that they said something from which you			9 A. I knew, but I don't think they were like on the top of my		
10 concluded that you might get nothing in terms of the prison			10 mind or they were even -- so much was going on, I don't even		
11 term?			11 think that was a topic for me.		
12 A. Correct. That was my understanding.			12 Q. Just so we are clear, the amount of the improper deductions		
13 Q. Your understanding was that if you cooperated you might get			13 that you took was \$17,000 in 2007?		
14 no prison at all?			14 A. Yes.		
15 A. Might get, yes.			15 Q. 75,000 in 2008, right?		
16 Q. Now, they mentioned your wife when they approached you,			16 A. Maybe. I am not sure.		
17 right?			17 Q. And \$100,000 in 2009, right?		
18 A. Yes.			18 A. I'm not sure about those amounts.		
19 Q. And that was a concern to you, wasn't it?			19 Q. Do you recall that in 2008 and 2009 it was the same amount		
20 A. They mentioned that they know she is not involved.			20 as the consulting payments you got from Diamondback?		
21 Q. Did they ask you whether she was at home?			21 A. Yeah, okay.		
22 A. Yes.			22 Q. Is that right?		
23 Q. Now, at first you told the FBI agents that you hadn't done			23 A. Right.		
24 anything wrong, right?			24 Q. In other words, you got this additional income from		
25 A. I do not remember saying that.			25 Diamondback and you offset it with fake deductions in 2008 and		

CBQMNEW6	Goyal - cross	Page 1599	CBQMNEW6	Goyal - cross	Page 1601
1	2009, right?		1	Q. You also understand the decision as to whether you provide	
2	A. I don't think I totally offset them with deductions. They		2	substantial assistance is made by the prosecutor, right?	
3	were not fully offset.		3	A. I am not sure. I know it's part of the government. I	
4	Q. Was it around the amount of the payments from Diamondback?		4	don't know exactly who in the government.	
5	A. No. It was way less than that. That's what I think.		5	Q. If you could look at, in your 3500 binder, tab 2.	
6	Q. Now, you understood when the FBI approached you that your		6	Do you have that?	
7	wife, Ruchi, that she had signed these invoices to Diamondback,		7	A. Yes.	
8	right?		8	Q. Is that your plea agreement?	
9	A. I knew? I didn't.		9	A. I think so.	
10	Q. Who signed the invoices that were sent to Diamondback for		10	Q. If you look at page 3, second full paragraph.	
11	payments you received?		11	A. Okay.	
12	A. Ruchi, my wife, did.		12	Q. The sentence in the middle that says, in addition.	
13	Q. And the money went into a joint account?		13	Do you see that?	
14	A. Correct.		14	A. Yes.	
15	Q. And your tax returns are joint returns, correct?		15	Q. If we read that, does that refresh your memory that it's	
16	A. Correct.		16	the government, the prosecutor, that decides whether you have	
17	Q. Were you concerned that your wife might have some exposure		17	provided substantial assistance?	
18	here as well?		18	A. Yes. I mean, I knew this office, but I am not exactly sure	
19	A. Again, for some reason that didn't arise in my mind at all		19	who within the office. It's the U.S. Government.	
20	for quite some time.		20	Q. It is the government that decides, correct?	
21	Q. Now, when you made the agreement with the government you		21	A. Yes.	
22	ultimately agreed to plead guilty, right?		22	Q. You have not been sentenced yet, correct?	
23	A. Yes.		23	A. Correct.	
24	Q. And the crime that you pleaded guilty to was securities		24	Q. There has been no determination of any prison term, fine,	
25	fraud, right?		25	anything else?	
CBQMNEW6	Goyal - cross	Page 1600	CBQMNEW6	Goyal - cross	Page 1602
1	A. Right.		1	A. Correct.	
2	Q. You did not plead guilty to tax fraud, right?		2	Q. You said you're not a U.S. citizen, right?	
3	A. Right.		3	A. Correct.	
4	Q. And you did not plead guilty to obtaining money from		4	Q. Nor is your wife, correct?	
5	Diamondback for submitting false invoices, right?		5	A. Correct.	
6	A. Right.		6	Q. There is potential deportation issues as well, correct?	
7	Q. And your wife, Ruchi, she didn't agree to plead guilty to		7	A. Correct.	
8	anything, right?		8	Q. There has not anything regarding that, either, correct?	
9	A. True.		9	A. True.	
10	Q. And she has not been charged with anything, correct?		10	Q. You did not leave your job at Neuberger Berman until	
11	A. Correct.		11	January 2012, is that correct?	
12	Q. Now, the government also told you that if you cooperate you		12	A. Correct.	
13	can get lenient treatment in any penalty you face, right?		13	Q. That was about six months after you were first approached	
14	A. I could.		14	by the FBI, right?	
15	Q. I think you testified on direct about a 5K letter, is that		15	A. Right.	
16	right?		16	Q. And it was about two months after you went to court and	
17	A. Yes.		17	pleaded guilty to securities fraud, is that right?	
18	Q. And you understand that based on your cooperation the		18	A. Right.	
19	prosecutors may write a letter to the judge about your		19	Q. The guilty plea in court was under seal, wasn't it?	
20	cooperation, right?		20	A. Yes.	
21	A. Right.		21	Q. That means that the proceedings were secret and not public,	
22	Q. And you understand that in order to get that letter you		22	correct?	
23	have to provide substantial assistance in their investigation		23	A. Correct.	
24	or prosecution, right?		24	Q. Whose decision was it to make that secret?	
25	A. Right.		25	A. I think it was the government's decision.	

CBQMNEW6	Goyal - cross	Page 1603	CBQMNEW6	Goyal - cross	Page 1605
1 Q. You did not tell Neuberger Berman that you had been			1 guilty to securities fraud, right?		
2 approached by the government, did you?			2 A. I am not sure what they would want to know and what they		
3 A. No.			3 would not.		
4 Q. You did not tell Neuberger Berman that you had entered a			4 Q. You thought that Neuberger Berman would be okay with		
5 guilty plea in court, correct?			5 employing somebody that pled guilty to securities fraud?		
6 A. Correct.			6 A. I don't think they would be okay.		
7 Q. You did not tell Neuberger Berman that you had sent false			7 Q. So you deceived them, right?		
8 invoices to Diamondback, right?			8 A. Again, I was cooperating with the government. This		
9 A. Right.			9 cooperation was under seal, supposed to be secret. I was not		
10 Q. And you did not tell Neuberger Berman that you had claimed			10 supposed to tell anybody about this.		
11 false deductions on your tax returns, right?			11 Q. The government didn't want you to tell, right?		
12 A. Right.			12 A. Right.		
13 Q. You just went right on working at Neuberger Berman as if			13 Q. And so you lived a lie for every day for six months at		
14 nothing had happened, is that it?			14 Neuberger Berman without telling them, right?		
15 A. Correct.			15 MR. TARLOWE: Objection.		
16 Q. You continued to do research, right?			16 THE COURT: Sustained.		
17 A. Yes.			17 Q. You went along with the government's request that you keep		
18 Q. You continued to give advice to Neuberger Berman traders,			18 this secret, right?		
19 right?			19 A. Yes.		
20 A. Whatever I was doing, portfolio managers and others, yes.			20 Q. Even though that meant working every day at Neuberger		
21 Q. You understood these portfolio managers managed stock for			21 Berman without telling them, right?		
22 investors, right?			22 A. Yes.		
23 A. Right.			23 Q. Did you think it was wrong of you to work every day at		
24 Q. They were making decisions as to what stocks to buy and			24 Neuberger Berman after pleading guilty without telling anyone?		
25 sell based on your advice, right?			25 MR. TARLOWE: Objection.		
CBQMNEW6	Goyal - cross	Page 1604	CBQMNEW6	Goyal - cross	Page 1606
1 A. Correct.			1 THE COURT: Sustained. I am not sure where all of		
2 Q. You continued to issue these reports even after you were			2 this is going. Sustained.		
3 approached by the government and pled guilty, right?			3 MR. FISHBEIN: Your Honor, could I have one minute to		
4 MR. TARLOWE: Objection.			4 confer? I think we are done.		
5 THE COURT: Overruled.			5 THE COURT: That's fine.		
6 A. Yes.			6 MR. FISHBEIN: Nothing further, your Honor.		
7 Q. On December 2, 2011, Neuberger Berman announced publicly			7 THE COURT: Mr. Morvillo.		
8 that Mr. Abbasi was placed on leave, correct?			8 We could take a break now or take a break after you		
9 A. Correct.			9 go.		
10 Q. And so you knew at that point that Neuberger -- did you			10 MR. MORVILLO: Break will be fine.		
11 have an understanding why he was placed on leave?			11 THE COURT: We will take a break before Mr. Morvillo		
12 A. I think there was an article in Wall Street Journal about			12 starts, short ten-minute break. Use the restroom, take a		
13 him being involved in insider trading.			13 drink. We are going to go until 4:30 or so today. Not too		
14 Q. In this case, right?			14 much more today.		
15 A. Correct.			15 All rise for the jury.		
16 Q. So you understood that Neuberger Berman did not want people			16 (Jury not present)		
17 working there that were involved in insider trading, right?			17 THE COURT: I had one question. Government Exhibit		
18 A. I am not sure exactly, but at some point there were other			18 2501NA, is that already in or did you offer that on cross?		
19 issues as well, but generally you are correct.			19 MR. FISHBEIN: 2501 is an exhibit in evidence. It has		
20 Q. You understand that Neuberger Berman is a regulated			20 all those Neuberger Berman records embedded in it. This is an		
21 business, right?			21 excerpt that takes those out and presents it for just the Dell		
22 A. Right.			22 trading.		
23 Q. They are regulated by the SEC, right?			23 THE COURT: You are offering it. I will then admit		
24 A. Right.			24 it. So 2501-NA is in.		
25 Q. You understood that they would want to know if you pled			25 (Government's Exhibit 2501-NA received in evidence)		

CBQMNEW6	Goyal - cross	Page 1607	CBQMNEW6	Goyal - cross	Page 1609
1	THE COURT: Anybody else we should cover now?		1	Q. In fact, you and Mr. Chiasson have never been in the same	
2	All right. You can use the restroom and we will be		2	room until the first time you took the stand, right?	
3	back in eight minutes.		3	A. I didn't know who he was.	
4	(Recess)		4	Q. Total strangers, right?	
5	THE COURT: Mr. Morvillo, are you ready?		5	A. Right.	
6	Let's bring them in.		6	Q. Now, Mr. Fishbein mentioned that you pled guilty, you pled	
7	(Jury present)		7	guilty to two different counts, isn't that right?	
8	THE COURT: We will now have cross-examination by Mr.		8	A. Right.	
9	Morvillo on behalf of Mr. Chiasson.		9	Q. Conspiracy count, right?	
10	CROSS-EXAMINATION		10	A. Right.	
11	BY MR. MORVILLO:		11	Q. And a securities fraud count as well?	
12	Q. Good afternoon, Mr. Goyal.		12	A. Right.	
13	A. Good afternoon.		13	Q. As part of the guilty plea, I believe that you said that	
14	Q. My name is Greg Morvillo and I have the privilege of		14	you secured information you were not permitted to have and you	
15	representing Anthony Chiasson in this matter.		15	passed it on to an individual at a hedge fund. Is that	
16	When I just introduced myself to you and mentioned		16	accurate?	
17	Mr. Chiasson's name, the entire time that you've been on the		17	A. Yes.	
18	stand, that's the first time his name is mentioned, isn't that		18	Q. And that individual was Jesse Tortora, correct?	
19	correct?		19	A. Correct.	
20	A. True.		20	Q. And the hedge fund was Diamondback, right?	
21	Q. And we have seen dozens of exhibits on the screen, in the		21	A. Yes.	
22	book, and in those exhibits we did not see his name mentioned		22	Q. It was not Level Global?	
23	either.		23	A. No.	
24	Would you agree with that?		24	Q. And it was not Anthony Chiasson?	
25	A. True.		25	A. No.	
CBQMNEW6	Goyal - cross	Page 1608	CBQMNEW6	Goyal - cross	Page 1610
1	Q. A lot of names were mentioned. Jesse Tortora, yes?		1	Q. And in all of the meetings that you had with the	
2	A. Yes.		2	government, the proffer sessions and the telephone calls, how	
3	Q. Rob Ray?		3	many would you say there were, sir?	
4	A. Yes.		4	A. Proffer sessions, five, six, maybe.	
5	Q. Several Neuberger Berman employees?		5	Q. And phone calls?	
6	A. Right.		6	A. I don't think there were phone calls.	
7	Q. Danny Kuo?		7	Q. No phone calls with the FBI?	
8	A. Yes.		8	A. There were. I don't know how many, number.	
9	Q. John Horvath?		9	Q. Would it be fair to say that in total you spoke to the FBI	
10	A. Right.		10	or the United States Attorney's Office or both upwards of 10,	
11	Q. Even some Lehman Brother recruiter, right?		11	15 times?	
12	A. Right.		12	A. Yes.	
13	Q. Not Mr. Chiasson, correct?		13	Q. And in none of those meetings did you suggest that you and	
14	A. Correct.		14	Anthony Chiasson agreed to commit a crime together, correct?	
15	Q. And that's because, at least in the e-mails that you sent,		15	A. Correct.	
16	it's because you don't know Anthony Chiasson, isn't that right?		16	Q. In fact, it's almost the exact opposite, because you asked	
17	A. That's right.		17	Mr. Tortora at one point if he was sharing this information	
18	Q. You have never e-mailed with him?		18	with anybody else and he said no, correct?	
19	A. No.		19	A. Yes, something to that effect, yes.	
20	Q. Never IM'd, instant messages, no text message, correct?		20	Q. And when you obtained information it was for Mr. Tortora.	
21	A. No.		21	That's who you spoke with, correct?	
22	Q. No telephone calls?		22	A. Correct.	
23	A. No.		23	Q. That's who instructed you to get information?	
24	Q. You don't follow each other on Twitter, right?		24	A. I am not sure -- yes, correct. There were times when he	
25	A. No.		25	would ask me to call my contact and get some information.	

CBQMNEW6	Goyal - cross	Page 1611	CBQMNEW6	Goyal - cross	Page 1613
1 Q. And the other person that you spoke to was Rob Ray, right?			1 correct?		
2 A. Correct.			2 A. Correct.		
3 Q. Now, as far as you know, is Rob Ray still working?			3 Q. Now, you obtained information and then you passed it to		
4 A. I do not know.			4 Jesse Tortora, correct?		
5 Q. You don't know if he's still working in investor relations			5 A. Correct.		
6 at a publicly-traded company?			6 Q. And after that you don't know what happened to that		
7 A. I do not know.			7 information from your personal knowledge, do you?		
8 Q. Now, you testified that in late 2007 Mr. Ray started to			8 A. The only thing was when he mentioned that that Todd is		
9 give you information, correct?			9 happy with your work.		
10 A. Correct.			10 THE COURT: Todd is happy with your work?		
11 Q. And you told him at some point that you were using that for			11 THE WITNESS: Yes.		
12 your modeling work, right?			12 Q. Let's focus on Mr. Chiasson for just a moment. You never		
13 A. Right.			13 passed any information to him, correct?		
14 Q. To help with your analysis, right?			14 A. Correct.		
15 A. Right.			15 Q. And you have no personal knowledge about what information		
16 Q. You did not tell him that you were passing it to someone so			16 he ever received on any company, correct?		
17 that they might trade on it, correct?			17 A. Correct.		
18 A. Correct.			18 Q. You don't know anything about Level Global's trades in Dell		
19 Q. He was in the dark about that piece of information, wasn't			19 in May, July, August 2008, correct?		
20 he?			20 A. Correct.		
21 MR. TARLOWE: Objection.			21 Q. You don't know anything about their trades in any stock at		
22 THE COURT: Do you know one way or the other whether			22 any time, isn't that right?		
23 he was in the dark?			23 A. I think so.		
24 THE WITNESS: He did not know or I didn't tell him			24 Q. You don't know whether they traded Dell, correct?		
25 that I was giving it to Jesse or somebody at the hedge fund.			25 A. Yeah. I didn't have any personal information about Level		
CBQMNEW6	Goyal - cross	Page 1612	CBQMNEW6	Goyal - cross	Page 1614
1 Q. And you never shared any of the money you received from			1 Global trading Dell.		
2 Diamondback with Mr. Ray, correct?			2 Q. So all you know, correct me if I'm wrong, all you know is		
3 A. Correct.			3 what you, Sandy Goyal, did. And as to what Anthony Chiasson		
4 Q. Or with any other money that you had, right?			4 did or didn't do or knew or didn't know, you have no		
5 A. Correct.			5 information whatsoever, correct?		
6 Q. And the point of that was that you didn't want him to be			6 MR. TARLOWE: Objection, form.		
7 paid because then he would have suspected something was wrong,			7 THE COURT: Sustained as to form.		
8 right?			8 Q. You have no personal knowledge as to anything Mr. Chiasson		
9 A. Right.			9 did ever in his entire life, is that right?		
10 Q. And the money that you were paid, that Mr. Tortora arranged			10 A. True.		
11 for you to get paid, that was him, correct?			11 MR. MORVILLO: I have no further questions, your		
12 A. Excuse me?			12 Honor.		
13 Q. Mr. Tortora is the one who arranged for you to be paid by			13 THE COURT: Redirect, Mr. Tarlowe.		
14 Diamondback, yes?			14 MR. TARLOWE: Yes, your Honor.		
15 MR. TARLOWE: Objection.			15 REDIRECT EXAMINATION		
16 THE COURT: Sustained. Rephrase.			16 BY MR. TARLOWE:		
17 Q. Mr. Tortora is the one who approached you about being a			17 Q. Mr. Goyal, you were asked some questions on		
18 consultant for Diamondback, correct?			18 cross-examination by Mr. Fishbein about your contact with other		
19 A. Correct.			19 friends at Dell, excluding Rob Ray.		
20 Q. And under that consulting agreement you received payment			20 Do you recall being asked some questions about that?		
21 from Diamondback, correct?			21 A. Yes.		
22 A. Correct.			22 Q. What was more valuable, the information that you got from		
23 Q. You did not receive payment from Level Global, right?			23 those people or from Rob Ray?		
24 A. Right.			24 MR. FISHBEIN: Objection, more valuable.		
25 Q. And did you not receive payment from Anthony Chiasson,			25 THE COURT: I am not sure. Sustained as to form.		

CBQMNEW6	Goyal - redirect	Page 1615	CBQMNEW6	Goyal - redirect	Page 1617
1	Rephrase.		1	financial results, did he discuss actual numbers?	
2	Q. Whose information did you find to be more useful?		2	MR. FISHBEIN: Objection. Asked and answered.	
3	MR. FISHBEIN: Objection.		3	THE COURT: Overruled.	
4	THE COURT: For your purposes, whose was more useful?		4	MR. FISHBEIN: And leading.	
5	THE WITNESS: Rob Ray's.		5	THE COURT: You can answer.	
6	Q. Why?		6	A. Yes.	
7	A. Because it was the overall consolidated information about		7	Q. What would you rather have, numbers or that a particular	
8	the upcoming quarterly financial results.		8	business segment is just okay, not doing good, but not too bad?	
9	Q. If we could look at Government Exhibit 755 which you were		9	MR. FISHBEIN: Objection. Argumentative.	
10	shown both in your direct and also during your		10	THE COURT: Overruled. You can answer.	
11	cross-examination.		11	A. Numbers.	
12	Do you recall this document?		12	Q. You testified that sometimes Rob Ray gave you the	
13	A. Yes.		13	information in a range, is that correct?	
14	Q. You testified this document contains information that you		14	A. Correct.	
15	got from your other friends at Dell, not Rob Ray, is that		15	Q. And Mr. Fishbein asked you about the size of that range in	
16	correct?		16	cross-examination.	
17	A. Correct.		17	Do you recall that?	
18	Q. And it contains information about different business units		18	A. Yes.	
19	in which those friends worked?		19	Q. How, if at all, did the size of the range change over the	
20	A. Correct.		20	course of the earnings cycle?	
21	Q. Just looking, for example, at number 1, it says: Corporate		21	A. Earnings cycle, within the quarter?	
22	bit slow.		22	Q. Yes.	
23	You see that?		23	A. Normally, it would narrow as the quarter would end and as	
24	A. Yes.		24	we got closer to the earnings report.	
25	Q. Number 2, it says: U.S. consumer doing good.		25	Q. So the range would become smaller is what you mean by	
CBQMNEW6	Goyal - redirect	Page 1616	CBQMNEW6	Goyal - redirect	Page 1618
1	You see that?		1	narrow?	
2	A. Yes.		2	A. Right.	
3	Q. Revenue growth is fine.		3	Q. If we could look at Government Exhibit 713.	
4	A. Correct.		4	MR. TARLOWE: If you could blow that up, Mr. Hoffman,	
5	Q. And number 4 it says: SMB is just okay, not doing good,		5	please.	
6	but not too bad.		6	Q. This was another document you were shown on direct and	
7	You see that?		7	asked some questions about on cross-examination by Mr.	
8	A. Yes.		8	Fishbein.	
9	Q. How did that information compare to information you got		9	Do you recall that document?	
10	from Rob Ray?		10	A. Right.	
11	MR. FISHBEIN: Objection.		11	Q. I believe you testified that the information in here was	
12	THE COURT: Overruled. You can answer.		12	information from Rob Ray, is that correct?	
13	A. This was like very general broad information about special		13	A. Correct.	
14	business segments; again, what I told others. It's just U.S.		14	Q. And the bottom e-mail was February 19, 2008. And during	
15	related. And some parts of U.S. business. The information I		15	your direct testimony we looked at a phone record which showed	
16	received from Rob was directly about the upcoming quarterly		16	a call between you and Rob Ray on the night of February -- the	
17	financial results for the overall company.		17	night before that, which is the night of February 18?	
18	Q. When you spoke to Rob Ray did he use numbers in your		18	A. Right.	
19	conversations with him?		19	Q. Do you recall that?	
20	A. Numbers like?		20	A. Yes.	
21	Q. Did he use numbers?		21	Q. The top e-mail is February 25, 2008, is that correct?	
22	A. I think he did in some of them, yes.		22	A. Correct.	
23	Q. For example, number 4 here says SMB is just okay, not doing		23	Q. I would like to show you what's been marked for	
24	good, but not too bad.		24	identification as Government Exhibit 2607C, which is an excerpt	
25	When Rob Ray gave you information about the quarterly		25	of your phone records from Government Exhibit 2607.	

CBQMNEW6	Goyal - redirect	Page 1619	CBQMNEW6	Goyal - redirect	Page 1621
1	MR. TARLOWE: The government offers Government Exhibit		1	Asia.	
2	2607C.		2	You see that?	
3	THE COURT: Pursuant to the stipulation that the		3	A. Yes.	
4	parties already have, Government Exhibit 2607C is received.		4	Q. Let me know you what's marked for identification as	
5	(Government's Exhibit 2607C received in evidence)		5	Government Exhibit 1800.	
6	Q. Mr. Goyal, I would like to direct your attention to the		6	Do you recognize that?	
7	line that has a call at February 25, 2008 at -- it says 1:42		7	A. This seems to be Dell's quarterly earnings release.	
8	a.m., which is actually February 24, '08 at 9:42 p.m.		8	Q. For what date?	
9	A. Yes.		9	A. It is on 28th February, 2008.	
10	Q. You see that? And that's a call from what number to what		10	MR. TARLOWE: The government offers Government Exhibit	
11	number?		11	1800.	
12	A. It's call from my home number to Rob Ray's cell number.		12	MR. FISHBEIN: No objection.	
13	Q. How long was that call?		13	MR. MORVILLO: No objection.	
14	A. About half an hour.		14	THE COURT: Government's 1800 is received.	
15	Q. That's a 31-minute call between your number and Rob Ray's		15	(Government's Exhibit 1800 received in evidence)	
16	number on the night of February 24, 2008.		16	Q. Mr. Goyal, if you could look at the second page.	
17	Now, just turning back to Government Exhibit 713,		17	A. Yes.	
18	that's on February 25, 2008 at 10:32 in the morning, is that		18	Q. This is Dell's press release that was issued on February	
19	correct?		19	28, 2008, is that correct?	
20	A. Correct.		20	A. Correct.	
21	Q. And you were asked some questions by Mr. Fishbein on		21	Q. And looking under the section that says regional	
22	cross-examination about Government Exhibit 713. And you were		22	highlights?	
23	asked something about whether you intended to indicate that you		23	A. Yes.	
24	had obtained this information improperly.		24	Q. Can you just tell what the business units are that are	
25	Do you recall that?		25	listed? Is this the first one, Americas business unit?	
CBQMNEW6	Goyal - redirect	Page 1620	CBQMNEW6	Goyal - redirect	Page 1622
1	A. Yes.		1	MR. MORVILLO: Object to the leading, your Honor.	
2	Q. I would like to direct your attention to the bottom e-mail,		2	THE COURT: Overruled. Let's watch the leading.	
3	to the third bullet point. After gross margins in high 18s and		3	Q. Can you read, Mr. Goyal, the first one?	
4	opex in high 13s, you wrote: Not sure if this includes		4	A. Americas business unit.	
5	one-time charges or not.		5	Q. The second one?	
6	What did you mean by that?		6	A. U.S. consumer.	
7	A. That I got this information, but I'm not sure, so it means		7	Q. The third one?	
8	that there was no discussion about it being one-time charges.		8	A. Asia Pacific and Japan.	
9	Q. If you come to a gross margin or opex number through a		9	Q. And now flipping back to the e-mail, 713, you see on the	
10	model that you built, would you know whether the numbers		10	bottom it has U.S. business, then U.S. consumer and then it is	
11	included one-time charges or not?		11	national?	
12	A. Yes, I would.		12	A. Yes.	
13	Q. Now, you also testified, I believe, on cross-examination		13	Q. If you could take a look at Government Exhibit 197.	
14	with respect to that same document that you thought the		14	A. Yes.	
15	information, not just the overall consolidated information, but		15	Q. You testified that the him he referred to in the middle	
16	also the segment information you thought came from Rob Ray, is		16	e-mail to Jesse Tortora was Rob Ray, is that correct?	
17	that correct?		17	A. Correct.	
18	A. Correct.		18	Q. I would like to show you what's been marked for	
19	Q. If you could take a look at the segment information,		19	identification as 2607E.	
20	looking at the bottom e-mail, so after revenue, EPS, and then		20	MR. FISHBEIN: Your Honor, I object insofar as this	
21	gross margins, those three are consolidated rolled up numbers,		21	was not covered during cross. I did not refer to this document	
22	correct?		22	at all.	
23	A. Correct.		23	THE COURT: What's the exhibit?	
24	Q. The next few bullet points talk about the U.S. business		24	MR. TARLOWE: 2607.	
25	segment, U.S. consumer business, and international, including		25	THE COURT: The exhibit that's on the screen.	

CBQMNEW6	Goyal - redirect	Page 1623	CBQMNEW6	Goyal - redirect	Page 1625
1	I don't think it came up.		1	A. 17 minutes.	
2	MR. TARLOWE: Your Honor, I can explain.		2	Q. And that sequence of calls took place on the night of June	
3	MR. FISHBEIN: Your Honor, I think he is just going		3	24, 2008, correct?	
4	over again something that he could have and did cover on		4	A. Right.	
5	direct.		5	Q. And the e-mail we just looked at, 197, was the among of	
6	THE COURT: Do we need a side bar on this?		6	June 24, is that correct?	
7	MR. TARLOWE: I would like to use it.		7	A. Yes.	
8	THE COURT: Let me hear the next question. What's the		8	Q. And flipping back to 197, when Mr. Tortora asked you here	
9	next question?		9	whether you hear anything new, did you understand him to be	
10	Now you're offering 2607E?		10	asking you for your model on Dell?	
11	MR. TARLOWE: E.		11	A. No.	
12	THE COURT: That's covered by the same stipulation as		12	Q. What did you understand him to be asking you?	
13	before, right?		13	A. If I got something new from Rob.	
14	MR. FISHBEIN: I'm just objecting to the line of		14	Q. Turning to Government Exhibit 198, here is an e-mail on	
15	questioning, covering something that wasn't dealt with during		15	July 1, 2008 where Jesse Tortora asked you, let me know if you	
16	cross. This is redirect.		16	pick up anything new, subject, Dell.	
17	MR. TARLOWE: Your Honor, the e-mail wasn't dealt		17	Did you understand that to be asking you for your	
18	with.		18	model on Dell?	
19	THE COURT: The time period was dealt with.		19	A. No.	
20	Overruled. I'll allow it.		20	Q. What was he asking you?	
21	Q. So 197 is an e-mail on June 24, 2008 where you have said,		21	A. If I hear anything new from Rob.	
22	tried yesterday, but again couldn't get hold of him. Left a		22	Q. Taking a look at 2607F, there is another excerpt from the	
23	voice mail. Hopefully will catch him today. That's the		23	phone records?	
24	morning of June 24, 2008.		24	MR. TARLOWE: The government offers 2607F.	
25	Mr. Goyal, if you can look at Government Exhibit 2607E		25	THE COURT: Same stipulation. 2607F.	
CBQMNEW6	Goyal - redirect	Page 1624	CBQMNEW6	Goyal - redirect	Page 1626
1	for identification.		1	(Government's Exhibit 2607F received in evidence)	
2	MR. TARLOWE: The government offers 2607E.		2	Q. The e-mail July 1, 2008 in the morning, correct?	
3	THE COURT: 2607E is covered by the same stipulation		3	A. Correct.	
4	as before, so that's received.		4	Q. You say: Hopefully will get something today, evening.	
5	(Government's Exhibit 2607E received in evidence)		5	Mr. Goyal, if you could take a look at those phone	
6	Q. Mr. Goyal, if you could please take a look at that phone		6	records, the excerpted phone records from your home phone. And	
7	record, your own phone records, and look at the line that has a		7	if you look at July 3, '08, there is a call at 12:01 a.m., so	
8	call on what's listed as June 25, '08 at 12:17 a.m.		8	that's actually the night of July 2, '08 at 8:01 p.m.	
9	A. Yes.		9	Do you see that call, listed as July 3, 2008, 12:01?	
10	Q. You see that?		10	A. Right, yes.	
11	A. Right.		11	Q. You see that?	
12	Q. And that's a call, June 24, '08, at 8:17 p.m.		12	A. Yes.	
13	How long was that call?		13	Q. And that's a call from whose number to whose number?	
14	A. 35 minutes.		14	A. From Rob's number to my number.	
15	Q. And it was from whose number to whose number?		15	MR. TARLOWE: Mr. Hoffman, if you could put that up	
16	A. My number to Rob's number.		16	and if you could just highlight that row.	
17	Q. And the very next call you made, which was at 10:14 p.m. on		17	Q. So it's July 3, '08. It says call -- 0:01 is the start	
18	the night of June 25, who was that call to?		18	time.	
19	A. Jesse Tortora.		19	How long was that call between your number and Rob	
20	Q. That call was four seconds long?		20	Ray's number?	
21	A. Right.		21	A. Around half an hour.	
22	Q. And then take a look at the next call.		22	Q. What's the next call that you made after that?	
23	Who is that call from?		23	A. To Jesse.	
24	A. Jesse called me back.		24	Q. How long was that call?	
25	Q. How long was that call?		25	A. 10 minutes.	

CBQMNEW6	Goyal - redirect	Page 1627	CBQMNEW6	Goyal - redirect	Page 1629
1	Q. And Government Exhibit 300, Mr. Tortora asks you on the		1	A. Yes.	
2	bottom, just checking in if you got anything new. You said		2	Q. Did you enjoy speaking to Rob Ray on the phone?	
3	nothing yet, tried to contact yesterday, will definitely have		3	A. It was okay. I don't think I had opinion one way or	
4	something by Monday.		4	another.	
5	Were you referring in this e-mail to any modeling that		5	Q. Did you like talking to people on the phone?	
6	you were doing?		6	MR. FISHBEIN: Objection.	
7	A. No.		7	THE COURT: You can answer the question.	
8	Q. If I could show you what's marked as 2607H for		8	A. Generally, I don't.	
9	identification.		9	(Continued on next page)	
10	MR. TARLOWE: The government offers 2607H pursuant to		10		
11	the same stipulation.		11		
12	THE COURT: 2607H is received.		12		
13	(Government's Exhibit 2607H received in evidence)		13		
14	Q. So the e-mail, before we leave the e-mail, 300, on August		14		
15	14, which is a Friday, according to the e-mail, you said, you		15		
16	tried to contact yesterday. Will definitely have something by		16		
17	Monday, which would be the 17th, correct?		17		
18	A. Right.		18		
19	Q. Taking a look at phone records in front of you, 2607H,		19		
20	that's a call from whose number to whose number?		20		
21	A. My number to Rob's number.		21		
22	Q. That's the night of August 13, '09 at 9:36 p.m.?		22		
23	A. Right.		23		
24	Q. And how long is that call?		24		
25	A. Three seconds.		25		
CBQMNEW6	Goyal - redirect	Page 1628	CBQFNEW7	Goyal - redirect	Page 1630
1	Q. What's the next call?		1	Q. Why did you continue to engage in those lengthy calls with	
2	A. Again, to Rob.		2	Rob Ray over that extended period of time?	
3	Q. How long is that call?		3	A. Because I wanted to get that information.	
4	A. Two seconds.		4	Q. Why?	
5	Q. Based on those records do you think you spoke to Rob Ray		5	A. To give it to Jesse.	
6	that night?		6	Q. Why?	
7	A. No.		7	A. Because I was getting paid.	
8	Q. And then turning to the next page of that excerpt, you see		8	Q. You said during your cross-examination by Mr. Fishbein when	
9	there there is a call labeled August 17, '09, which would be		9	he asked you about career advice you provided to Rob Ray	
10	August 16 at 9:46 p.m.?		10	compared to career advice you provided to other people, do you	
11	A. Yes.		11	recall being asked about that?	
12	Q. And that call was from --		12	A. Yes.	
13	A. This is Austin base number.		13	Q. And I think you were trying to say that, or you said	
14	Q. Look at the number above it.		14	something about the detail and amount of time you spent with	
15	A. That number above this is a call from my home number to		15	Rob Ray was different than with others. What did you mean by	
16	Rob.		16	that?	
17	Q. How long is the call?		17	A. It means I would give career advice and review his resume	
18	A. Six, seven minutes.		18	and other things for people too if they asked me, but I haven't	
19	Q. And that is the night of August 16, 2009, correct?		19	talked to somebody for half an hour or one hour or longer in	
20	A. Correct.		20	procession for so many times. He's the only one that called	
21	Q. Going back to the e-mail on August 14, on Friday, you said,		21	me.	
22	will definitely have something by Monday, the 17th, correct?		22	Q. And the calls to Rob Ray you testified took place usually	
23	A. Correct.		23	at night, right?	
24	Q. Some of the calls we looked at with Rob Ray were quite		24	A. Correct.	
25	lengthy?		25	Q. And the phone records we looked at of the calls with Rob	

<p>CBQFNEW7 Goyal - redirect Page 1631</p> <p>1 Ray were at night, right?</p> <p>2 A. Right.</p> <p>3 Q. Did you have an understanding of the physical layout of</p> <p>4 investor relations at Dell headquarters?</p> <p>5 A. Yes.</p> <p>6 Q. What was your understanding?</p> <p>7 A. Generally like everywhere at Dell most of the offices were</p> <p>8 cubicles.</p> <p>9 Q. You testified there were some other people including Shep</p> <p>10 Dunlap who you talked to in investor relations, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did you call those people at night?</p> <p>13 A. No.</p> <p>14 Q. Did you call those people from home?</p> <p>15 A. No.</p> <p>16 Q. Did you typically call those people on their cell phones?</p> <p>17 A. I'm not sure. I may have called once or twice on the work</p> <p>18 cell phone number or if they were not available on their office</p> <p>19 number.</p> <p>20 Q. Did anyone else in Dell investor relations ever give you</p> <p>21 quarterly financial results before they were announced to the</p> <p>22 public?</p> <p>23 A. No.</p> <p>24 Q. Now, you talked about, you were asked some questions --</p> <p>25 let's take a look at Defense Exhibit 994. Would you put that</p>	<p>CBQFNEW7 Goyal - redirect Page 1633</p> <p>1 MR. FISHBEIN: Objection.</p> <p>2 THE COURT: Overruled. You could answer.</p> <p>3 A. I saw it as a long-term level.</p> <p>4 THE COURT: Long-term what?</p> <p>5 THE WITNESS: Level.</p> <p>6 THE COURT: Level.</p> <p>7 Q. How did that -- withdrawn. Now, you were asked about, you</p> <p>8 were asked some questions on cross-examination about talking to</p> <p>9 investor relations for help with models. Do you recall being</p> <p>10 asked about that?</p> <p>11 A. I'm not sure if I was asked.</p> <p>12 Q. When did you typically update your models?</p> <p>13 A. Typically after the company reported. That was biggest</p> <p>14 time.</p> <p>15 Q. After the announcement, after results were made public?</p> <p>16 A. Right.</p> <p>17 Q. When you talked to investor relations about your model, did</p> <p>18 you typically talk about the past results that had already been</p> <p>19 announced or future results?</p> <p>20 A. Generally the past results explanation of various line</p> <p>21 items.</p> <p>22 Q. You were asked some questions about your model on Dell. Do</p> <p>23 you recall that?</p> <p>24 A. Yes.</p> <p>25 Q. If we can take a look at Defense Exhibit 964 which is in</p>
<p>CBQFNEW7 Goyal - redirect Page 1632</p> <p>1 up? Thank you. If you could enlarge it, please. I think you</p> <p>2 testified on cross-examination that these were notes of a lunch</p> <p>3 meeting that Lynne Tyson held. Do you recall that?</p> <p>4 A. Yes.</p> <p>5 Q. And when Mr. Fishbein asked you about the section called</p> <p>6 demand and the bullet point on geographically, I think you were</p> <p>7 explaining that you weren't sure if that was a commentary on</p> <p>8 Dell's business. What did you mean by that?</p> <p>9 A. Typically companies instead of seeing that their revenue is</p> <p>10 bad they talk about general demand being weak to overall</p> <p>11 economic situation or overall demand, not just for their</p> <p>12 product is good or bad in which geographic segments.</p> <p>13 Q. Did you understand that to be about Dell's business or the</p> <p>14 PC business?</p> <p>15 A. I'm not sure which way it would be. Generally markets</p> <p>16 would be all the PC markets not just Dell.</p> <p>17 Q. Scrolling down under cost cuts the last bullet point you</p> <p>18 were asked questions about the comment implied that normalized</p> <p>19 GM is near 18 percent. What did you understand normalized GM</p> <p>20 would be?</p> <p>21 A. As I said at that time normalized means if we take out the</p> <p>22 sales fluctuation from quarter to quarter, then on the average</p> <p>23 the level would be around 18 percent.</p> <p>24 Q. Did you view that as a commentary on the long-term outlook</p> <p>25 or short-term?</p>	<p>CBQFNEW7 Goyal - redirect Page 1634</p> <p>1 tab 18 in your defense binder. If you could blow up the top.</p> <p>2 You testified I believe on cross-examination that you did not</p> <p>3 believe the information in here came from Rob Ray, correct?</p> <p>4 A. Correct.</p> <p>5 Q. I think you said that was because you were saying things</p> <p>6 like you were guessing around 18.4.</p> <p>7 A. Right.</p> <p>8 Q. Do you remember whether as of February 4, 2009 you had</p> <p>9 information from Rob Ray about the upcoming quarterly earnings</p> <p>10 announcement?</p> <p>11 A. I'm not sure.</p> <p>12 Q. If you could take a look at Government Exhibit 2607J, which</p> <p>13 is another excerpt from the phone records we offer pursuant to</p> <p>14 the same stipulation.</p> <p>15 THE COURT: 2607, Government 2607J is received</p> <p>16 pursuant to the stipulation.</p> <p>17 (Government's Exhibit 2607J received in evidence)</p> <p>18 MR. FISHBEIN: Mr. Hoffman, if you could highlight the</p> <p>19 first row.</p> <p>20 Q. This is a call that shows up on February 5 at 3:58 a.m.,</p> <p>21 which is February 4, '09 at 11:58 p.m. That's the night of the</p> <p>22 e-mail we just looked at?</p> <p>23 A. Yes.</p> <p>24 Q. Who is this a call between?</p> <p>25 A. Me and Rob.</p>

CBQFNEW7	Goyal - redirect	Page 1635	CBQFNEW7	Goyal - redirect	Page 1637
1 Q. How long?			1 A. Yes.		
2 A. About half an hour.			2 Q. And in this e-mail you and Mr. Tortora are talking about he		
3 Q. You can take that down and if we could put up Defense			3 says he gets 36 to 37 cents per share, you get around 36. Do		
4 Exhibit 208. You were asked some questions about this research			4 you see that?		
5 report issued by you and Fayad Abbasi on May 11, 2008. Do you			5 A. Yes.		
6 recall that?			6 Q. Is that higher, lower or the same as your model was		
7 A. Yes.			7 predicting as of May 11?		
8 Q. And if you look in the box in the middle and to the right			8 A. It's higher than that.		
9 it says quarter F04/08 estimate. Do you see that?			9 Q. What was this information based on?		
10 A. Yes, I do.			10 A. I think it was based upon Rob Ray's information.		
11 MR. TARLOWE: Mr. McLeod, would you mind highlighting			11 Q. Going back to Defense Exhibit 208. You were asked some		
12 that? You could highlight on the right-hand side under quarter			12 questions about Mr. -- the information that was attributed to		
13 over there? Yes.			13 Dell's CFO about head count reduction. Do you recall that?		
14 Q. What is that, just the first row. So what is that an			14 A. Yes.		
15 estimate for?			15 Q. And if you could take a look at the second paragraph under		
16 A. This is quarter ending in April of '08.			16 summary and investment conclusion?		
17 Q. Which was announced at the end of May '08?			17 A. Yes.		
18 A. Right.			18 Q. And do you see the third sentence says, "While EPS may be a		
19 Q. Next to it it says NB and next to it it says 33 cents?			19 hair shy of consensus estimate for the quarter," do you see		
20 A. Yes.			20 that?		
21 Q. Is that an estimate for Dell's earnings per share for the			21 A. I do.		
22 May 2008 announcement?			22 Q. So in this research report -- could you highlight that		
23 MR. MORVILLO: Object to the leading, your Honor.			23 portion, "while EPS may be a hair shy." So in this report in		
24 THE COURT: Yes. What is NB?			24 May of 2008 was Neuberger Berman predicting that EPS would be		
25 THE WITNESS: Neuberger Berman.			25 above, the same as or below consensus?		
CBQFNEW7	Goyal - redirect	Page 1636	CBQFNEW7	Goyal - redirect	Page 1638
1 THE COURT: What's the number refer to?			1 A. Slightly lower than consensus.		
2 THE WITNESS: It's Neuberger Berman, which is our			2 Q. And so this report which you were cross-examined about		
3 estimate of the EPS for that quarter.			3 whether it took into account this information about head count		
4 THE COURT: Of the EPS, all right.			4 reduction, notwithstanding that information, Mr. Abbasi and you		
5 Q. Is that based on your model?			5 were predicting that earnings per share would be slightly below		
6 A. Yes.			6 consensus, is that correct?		
7 Q. And so as of May 11, 2008 your model was showing an			7 A. Right.		
8 estimate of 33 cents per share, correct?			8 Q. And turning to the second page, the top of the second page,		
9 A. Correct.			9 if you could highlight where it says the first two rows, it		
10 Q. I think Mr. Fishbein showed you the actual announcement of			10 talks about the head count reduction information and in a		
11 that quarter which was higher than that. Do you recall that?			11 parenthesis it says, "Although we believe it was late in the		
12 A. Yes, I do.			12 quarter and did not have much of a benefit for the April		
13 Q. So perhaps your modeling was not as good as Mr. Fishbein			13 quarter," is the April quarter the one that gets announced at		
14 suggested?			14 the end of the May?		
15 MR. FISHBEIN: Objection.			15 A. Yes.		
16 THE COURT: Yes. That's not a question. Okay.			16 Q. What did you understand this to mean that it did not have		
17 Sustained.			17 much of a benefit for the April quarter?		
18 MR. TARLOWE: I'll rephrase it.			18 A. It means that this head count reduction or cost cuts took		
19 Q. Was that estimate accurate?			19 so late in the quarter that it won't have much benefit for the		
20 A. I don't think so.			20 quarter that is already ended. It wouldn't benefit their EPS.		
21 Q. And that's on May 11. If we could now look at the e-mail			21 Q. Now, you were asked some questions about your cooperation		
22 from May 16 which is five days later which is Government			22 agreement with the government, do you recall that?		
23 Exhibit 187. And if you remember on your direct testimony, you			23 A. Yes.		
24 were shown a phone call between you and Rob Ray the night			24 Q. I'm showing you, it's marked for identification as		
25 before this e-mail. Do you recall that?			25 Government Exhibit 3507-2.		

CBQFNEW7	Goyal - redirect	Page 1639	CBQFNEW7	Goyal - redirect	Page 1641
1	MR. TARLOWE: The government offers 3507-2.		1	THE COURT: Overruled. You can answer.	
2	MR. FISHBEIN: No objection.		2	A. I don't think so.	
3	THE COURT: All right, Government Exhibit 3507-2 is		3	Q. How did that money compare to your full-time salary at	
4	received.		4	Neuberger Berman?	
5	Q. Mr. Goyal, this is a copy of your cooperation agreement		5	A. It was approximately half of that.	
6	with the government?		6	Q. Your salary at Neuberger Berman or --	
7	A. Yes.		7	A. Yes, I mean, salary, I received 170,000 per year and I	
8	Q. What happens with this agreement if you don't tell the		8	received 175 here for two years.	
9	truth?		9	Q. And you were asked some questions by Mr. Morvillo about Mr.	
10	A. It gets canceled.		10	Chiasson and Level Global. Do you recall that?	
11	Q. And then what happens to that 5K letter that you testified		11	A. Right.	
12	you hope to receive?		12	Q. Did you know Sam Adonakis?	
13	A. It doesn't get written.		13	A. I did.	
14	Q. You were asked some questions by Mr. Fishbein about whether		14	Q. And did you know whether or not Mr. Tortora had a	
15	you told Neuberger Berman that you had pled guilty. Do you		15	relationship with Mr. Adonakis?	
16	recall that?		16	A. They were friends.	
17	A. Yes.		17	Q. And did you know anything else about the nature of their	
18	Q. Why didn't you tell Neuberger Berman?		18	relationship?	
19	A. Because I was cooperating with the government and it was		19	A. Like?	
20	all secret so I didn't tell anyone.		20	Q. Did you know whether they had any business relationship or	
21	Q. Who instructed you not to tell anyone?		21	association?	
22	A. The government did.		22	A. It was Dell, the e-mails they used to share.	
23	Q. You testified that your guilty plea was under seal. Do you		23	Q. You testified you knew about that because they were copied	
24	recall that?		24	on those?	
25	A. Yes.		25	A. Yes.	
CBQFNEW7	Goyal - redirect	Page 1640	CBQFNEW7	Goyal - redirect	Page 1642
1	Q. Do you have an understanding as to whether a judge decides		1	Q. Did you know that Mr. Adonakis worked at a hedge fund?	
2	to seal the courtroom?		2	A. Yes.	
3	A. I think so.		3	Q. Did you know, you testified you knew Mr. Tortora worked at	
4	Q. Now, you were asked some questions about the payments you		4	Diamondback, correct?	
5	received from Diamondback. Do you recall that?		5	A. Right.	
6	A. Yes.		6	Q. And you understand that a hedge fund trades stocks?	
7	Q. What did you believe you were getting paid for?		7	A. Yes.	
8	A. It was for the Dell information, providing Jesse with the		8	Q. Did you understand that portfolio managers at the hedge	
9	Dell information.		9	funds are the people who make the decisions about which stocks	
10	Q. And you testified you got paid \$175,000 over two years.		10	to buy or sell?	
11	A. Right.		11	MR. MORVILLO: Object to the leading.	
12	Q. I'm sorry, what information did you believe you were being		12	MR. FISHBEIN: Objection. Leading, argumentative.	
13	paid for?		13	THE COURT: Sustained with respect to the leading.	
14	MR. MORVILLO: Objection. Asked and answered several		14	Q. Do you know who at hedge funds make decisions about what	
15	times.		15	stocks to buy or sell?	
16	THE COURT: You said information that you provided to		16	MR. FISHBEIN: Objection.	
17	Jesse. Could you be more specific?		17	THE COURT: Overruled. You could answer.	
18	THE WITNESS: Information about Dell quarterly		18	A. Normally it's the portfolio managers.	
19	results.		19	Q. And you were asked some questions about what you told Rob	
20	Q. You testified that you got \$175,000 from Diamondback over		20	Ray you were doing with information. Do you remember that?	
21	two years, is that correct?		21	A. Yes.	
22	A. Right.		22	Q. And I think you said that was one of the things you told	
23	Q. Do you believe you got that money because you were an		23	him was that you used it in connection with your models, do you	
24	expert modeler?		24	recall that?	
25	MR. FISHBEIN: Objection.		25	A. Yes.	

CBQFNEW7	Goyal - redirect	Page 1643	CBQFNEW7	Goyal - recross	Page 1645
1	Q. Was that true?		1	name the name Rob Ray, correct?	
2	A. I used that -- I didn't. The numbers he gave me I did not		2	A. Correct.	
3	put those numbers in my models. I just used it so that my		3	Q. So from the face of the e-mail it's not apparent who you're	
4	estimates are not too far away from the actual results, but I		4	talking to, correct?	
5	didn't use those actual numbers.		5	A. It's not, but it's like generally there is only one Dell	
6	Q. Did you tell Rob Ray -- what if anything did you tell Rob		6	contact who is in corporate who gives that kind of information,	
7	Ray about what you did at Neuberger Berman?		7	so it was implied. He didn't know the name, but I think it was	
8	A. I told him that I work in central research department.		8	implied the person who has that information.	
9	Q. What if anything did you tell him about who those models		9	Q. You never told Jesse Tortora the name, right?	
10	were for?		10	A. True.	
11	A. So they are for our portfolio managers.		11	Q. And you certainly never put it in an e-mail, correct?	
12	Q. What do the portfolio managers do?		12	A. Correct.	
13	A. They trade stocks.		13	Q. If we could -- oh. You mentioned that your calls with Rob	
14	Q. And did you tell -- what if anything did you tell Mr. Rob		14	Ray were in the evening, is that right?	
15	Ray about who your stock recommendations were intended for?		15	A. Right.	
16	A. Portfolio managers.		16	Q. Now, do you happen to know whether the personnel within	
17	MR. TARLOWE: Just one moment.		17	Dell's IR department were permitted to do work calls out of the	
18	Nothing further.		18	office? Do you know?	
19	THE COURT: Okay, Mr. Fishbein?		19	A. They were permitted to do what?	
20	RE CROSS EXAMINATION		20	Q. I'm asking you, do you happen to know whether the people	
21	BY MR. FISHBEIN:		21	working at Dell's investor relations department, whether they	
22	Q. If we could just get Exhibit, Defense 994 on screen. And		22	were permitted to do work calls when they were out of the	
23	it's, Mr. Goyal, it's your tab 5. If we could blow up the part		23	office?	
24	under cost cuts.		24	A. If they're on like trips, investor relations doing travel,	
25	Do you recall, Mr. Goyal, this is your notes of your		25	it's my understanding they took calls, because to my	
CBQFNEW7	Goyal - recross	Page 1644	CBQFNEW7	Goyal - recross	Page 1646
1	conversation with Lynne Tyson, correct?		1	understanding calls came in during their business trips.	
2	A. Yes.		2	Q. In other words, you understand investor relations they're	
3	Q. And you actually put a specific number in here relating to		3	supposed to be responsive to investor calls, right?	
4	gross margins, right?		4	A. Right.	
5	A. Near 18 percent levels, yes.		5	Q. And if that means taking calls while they're out of the	
6	Q. And just so we're clear, that number, 18 percent for gross		6	office, that's okay, right?	
7	margin, that relates to Dell, correct?		7	A. Generally speaking they could, yes.	
8	A. Dell, yes.		8	Q. If we could look at Government Exhibit 2607H. Those are	
9	Q. That's not an industry number, right?		9	the phone records. Do you see those? You have 2607H?	
10	A. True.		10	A. Okay, yes.	
11	Q. And that's a rolled up, consolidated number for all of		11	Q. And we're going to look at page 2. Now, Mr. Tarlowe just	
12	Dell, correct?		12	asked you about a call with Rob Ray I believe it was on	
13	A. Correct.		13	August 17. If you look at August 17 at 1:39 there's a call	
14	Q. And you testified previously that Ms. Tyson, as far as you		14	from your number to 813-804 -- I'm sorry, 813-380-3010. Do you	
15	understood, was authorized to give you that information, right?		15	see that?	
16	A. That was my understanding, yes.		16	A. Yes.	
17	Q. If we could look at Government Exhibit 197 and just, if we		17	Q. You said that's Rob Ray's number?	
18	could just roll up the middle part there. This is an e-mail		18	A. Correct.	
19	from you to Mr. Tortora, right?		19	Q. I notice there are some other calls on this page with a 512	
20	A. Correct.		20	area code. Do you see that?	
21	Q. And you make a reference to get hold of him, right?		21	A. Yes.	
22	A. Yes.		22	Q. Where is 512?	
23	Q. You do not say Rob Ray, right?		23	A. Austin, Texas.	
24	A. Correct.		24	Q. The people, the friends that you had at Dell, who you	
25	Q. In fact, in none of your e-mails to Mr. Tortora did you		25	stayed in touch with after you left, where did they live?	

CBQFNEW7	Goyal - recross	Page 1647	CBQFNEW7	Goyal - recross	Page 1649
1	A. Austin, Texas.		1	Q. And you don't recall speaking to Rob Ray before writing	
2	Q. If you look at these numbers, let's start with August 15 at		2	this e-mail on February 4, 2009 at 4:05 p.m., do you?	
3	6:03, do you see that, 1803? There's a number 512-689-5530.		3	A. No.	
4	Do you see that?		4	Q. And I believe you testified before that as best you can	
5	A. Yes.		5	tell this e-mail does not contain information from Rob Ray,	
6	Q. Is that one of your friends?		6	correct?	
7	A. There's I think this friend lives in New York and they just		7	A. Correct.	
8	have an Austin area code number.		8	MR. FISHBEIN: That's all I have.	
9	Q. Did that person used to work at Dell?		9	THE COURT: Mr. Morvillo?	
10	A. He left before me.		10	MR. MORVILLO: No questions, your Honor.	
11	Q. There's another number August 16, 1:13, 512-300-8959. Do		11	THE COURT: Okay. Mr. Tarlowe, any re-redirect?	
12	you see that?		12	REDIRECT EXAMINATION	
13	A. Same thing. It's that person, they live in New York.		13	BY MR. TARLOWE:	
14	Q. And then there's a 512-797-1597. Do you see that one?		14	Q. If you could just put up 2607H. You were just shown this	
15	A. That's my cell number.		15	by Mr. Fishbein. If I could direct your attention to page 2.	
16	Q. Oh, I'm sorry. Okay. And then there's on August 17 at		16	A. Yes.	
17	1:39 there's a -- do you see the call to Rob Ray, the 813		17	Q. And you look at the call that's listed as August 17, 2009	
18	number? That's at 1:39?		18	at 1:46 a.m.?	
19	A. Yes.		19	A. Yes. Yes.	
20	Q. And then there's a call from a 512-733-8406?		20	Q. And you see the first number Mr. Fishbein asked you about	
21	A. I'm not hundred percent sure, but this may be Rob's other		21	is a 512 number?	
22	number. I think so.		22	A. Yes.	
23	Q. But you're not sure, right?		23	Q. And who do you think that number belonged to?	
24	A. You can double check. Yes, I'm not sure.		24	A. I thought it was Rob. I wasn't sure.	
25	Q. In any event, there are a number of different 512 numbers,		25	MR. TARLOWE: I'm going to read, your Honor, from a	
CBQFNEW7	Goyal - recross	Page 1648	CBQFNEW7	Goyal - redirect	Page 1650
1	is that correct? When you spoke to your friends, your friends		1	stipulation. I believe it's Defense Exhibit A. Phone number	
2	at Dell, did you speak by phone?		2	512-733-8406 was assigned to Rob Ray.	
3	A. Yes.		3	THE COURT: Is that it?	
4	Q. And you would call them on their cell and other phone		4	MR. TARLOWE: Yes.	
5	numbers?		5	THE COURT: All right. Mr. Goyal, you can step down.	
6	A. Correct.		6	(Witness excused)	
7	Q. Now, if we could go to Defense Exhibit 964 and Mr. Tarlowe		7	THE COURT: I don't assume you have a two-minute	
8	showed you some phone records, and if you look in front of you,		8	witness after that?	
9	it's Government Exhibit 2607J. Do you see that?		9	MR. TARLOWE: Our next witness is going to be lengthy.	
10	A. I see that.		10	THE COURT: All right, so why don't we break now.	
11	Q. And there's a call on August 5th at 4:28, and I believe?		11	We'll adjourn until tomorrow morning at 9:30. Have a good	
12	MR. FISHBEIN: Mr. Tarlowe, you said that that		12	evening. Watch Monday night football. Don't discuss the case.	
13	translates after the adjustment to what time?		13	Keep an open mind and we'll see you tomorrow at 9:30. Thank	
14	MR. TARLOWE: I think it's four hours earlier.		14	you. All rise for the jury.	
15	Q. So it's late in the evening on February 4, is that correct?		15	(Jury excused)	
16	Anyway, I believe that's what the representation was. If you		16	(Continued on next page)	
17	look at Defense Exhibit 964, are you with me? That's the		17		
18	e-mail.		18		
19	A. Which?		19		
20	Q. Defense Exhibit 964, it's your tab 18.		20		
21	A. Yes, I'm looking at it here on the monitor, yes.		21		
22	Q. And that's at 4:05 p.m., correct?		22		
23	A. Yes.		23		
24	Q. So that's before the evening of February 4, right?		24		
25	A. Yes.		25		

CBQFNEW7	Goyal - redirect	Page 1651			Page 1653
1	(In open court; jury not present)		1	INDEX OF EXAMINATION	
2	THE COURT: Okay, have a seat. So what's the order		2	Examination of:	Page
3	going forward?		3	SANDEEP GOYAL	
4	MS. APPS: The next witness is Sam Adonakis and he's		4	Direct By Mr. Tarlowe . . . . .	.1409
5	going to be on the stand for a while.		5	Cross By Mr. Fishbein . . . . .	.1488
6	THE COURT: For the full day tomorrow you think?		6	Cross By Mr. Morvillo . . . . .	.1607
7	MS. APPS: It's quite possible it will be the full day		7	Redirect By Mr. Tarlowe . . . . .	.1614
8	tomorrow. It's hard to judge exactly, but yes. We presume		8	Recross By Mr. Fishbein . . . . .	.1643
9	cross-examination will be almost the rest of the week,		9	Redirect By Mr. Tarlowe . . . . .	.1649
10	presumably. I'm not sure. I shouldn't speak for defense		10	GOVERNMENT EXHIBITS	
11	counsel for cross-examination, but prior indications are that		11	Exhibit No.	Received
12	there will be considerable cross-examination.		12	2171 . . . . .	.1411
13	THE COURT: Mr. Weingarten, are you planning to cross		13	750 . . . . .	.1428
14	this witness?		14	751 through 753 . . . . .	.1429
15	MR. WEINGARTEN: I am, your Honor.		15	754 . . . . .	.1433
16	THE COURT: All right. Okay, keep each other apprised		16	710 . . . . .	.1435
17	as to sort of the next witnesses so nobody is caught flat		17	2607B . . . . .	.1437
18	footed, but a lot of it depends on how long certain witnesses		18	711 . . . . .	.1438
19	take. So I'll see you tomorrow. Anything else we need to		19	713 . . . . .	.1441
20	discuss today?		20	715 . . . . .	.1445
21	The government, as I mentioned this morning, had filed		21	719 . . . . .	.1446
22	a supplemental motion to preclude certain expert testimony. Do		22	719B . . . . .	.1447
23	the defendants intend to respond?		23	720A . . . . .	.1449
24	MR. NATHANSON: Your Honor, we just got this this		24	2607D . . . . .	.1452
25	morning, so if we do, it will be obviously very brief. I think		25	726 . . . . .	.1454
CBQFNEW7	Goyal - redirect	Page 1652			Page 1654
1	that was two or three pages.		1	725 . . . . .	.1454
2	THE COURT: Yes, this is four pages, but it's really		2	198 . . . . .	.1457
3	three pages, double spaced.		3	2607-G . . . . .	.1459
4	MR. NATHANSON: If we put in something it will be very		4	733 . . . . .	.1460
5	brief and we should have it by tomorrow morning.		5	734 . . . . .	.1461
6	MS. APPS: With some trigger because we recently		6	756 . . . . .	.1462
7	received slides and that gave us more context to the exhibits		7	717 . . . . .	.1468
8	with the slides. The big binder I gave you.		8	759 . . . . .	.1472
9	THE COURT: We can talk about that tomorrow, we can		9	736 . . . . .	.1474
10	talk about that Wednesday. We're not getting to this for some		10	748 . . . . .	.1477
11	time, I think. You don't have to rush to get me something		11	737 . . . . .	.1481
12	tomorrow morning if later in the day tomorrow or the next day		12	739 . . . . .	.1483
13	is fine with me.		13	740 . . . . .	.1487
14	MR. NATHANSON: Thank you, your Honor.		14	747 . . . . .	.1590
15	THE COURT: Okay. Great, have a good evening. I'll		15	2501-NA . . . . .	.1606
16	see you tomorrow.		16	2607C . . . . .	.1619
17	(Adjourned to November 27, 2012 at 9:30 a.m.)		17	1800 . . . . .	.1621
18			18	2607E . . . . .	.1624
19			19	2607F . . . . .	.1626
20			20	2607H . . . . .	.1627
21			21	2607J . . . . .	.1634
22			22	DEFENDANT EXHIBITS	
23			23	Exhibit No.	Received
24			24	757 . . . . .	.1502
25			25	994 . . . . .	.1505

1	1228	. . . . .	.1508
2	8627	. . . . .	.1526
3	8661	. . . . .	.1527
4	8822	. . . . .	.1528
5	88831530
6	90251530
7	91421532
8	86561535
9	9641553
10	2081573
11	2607AA1580
12			
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